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Presidential Documents

Title 3—

The President

Notice of December 15, 1987

Continuation of Libyan Emergency

On January 7, 1986, by Executive Order No. 12543, I declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of the Government of Libya. On January 8, 1986, by Executive Order No. 12544, I took additional measures to block Libyan assets in the United States. I transmitted a notice continuing this emergency to the Congress and the **Federal Register** on December 23, 1986. Because the Government of Libya has continued its actions and policies in support of international terrorism, the national emergency declared on January 7, 1986, and the measures adopted on January 7 and January 8, 1986, to deal with that emergency, must continue in effect beyond January 7, 1988. Therefore, in accordance with Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Libya. This notice shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
December 15, 1987.

[FR Doc. 87-29101
Filed 12-15-87; 3:52 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 831

Retirement; Law Enforcement Officers and Firefighters

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations for the special retirement provisions for law enforcement officers and firefighters employed under the civil service retirement law. The regulations revise the current regulations in order to improve administration of the program by clarifying the methods and criteria for obtaining coverage under the special provisions.

EFFECTIVE DATE: Regulations effective January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Raymond J. Kirk, (202) 632–4682.

SUPPLEMENTARY INFORMATION: Section 8336(c) of title 5, United States Code, authorizes immediate retirement benefits at age 50 for Federal employees who have completed 20 years of Federal civilian service as a law enforcement officer or firefighter. Employees who are eligible to retire under this provision are mandatorily separated at age 55, or, under limited circumstances which warrant an extension of service, at age 60. Employees and their agencies each contribute an extra half percent of pay for this benefit. Section 8331 *et seq.* and these regulations promulgated at Subpart I of Part 831 of Title 5, Code of Federal Regulations, are applicable to the Civil Service Retirement System (CSRS) *only*. This section of law and these regulations do *not* apply to employees covered by the "new" retirement system—The Federal Employees' Retirement System (FERS)—established by Pub. L. 99–335.

On December 19, 1986, OPM published proposed regulations in the Federal Register (51 FR 45471) on this subject. During the comment period, OPM received 65 comments. The comments are addressed below.

Many comments addressed the proposed definition of administrative secondary positions. The proposed definition requires that experience in a primary position must be a mandatory prerequisite for a secondary position. Thus, Federal law enforcement or firefighting experience is required. Many of the comments pointed out that for some positions there are dual career tracks. For example, primary firefighters are often hired as fire inspectors, but some people become fire inspectors without first being a firefighter. They argue that it is unfair to deny early retirement coverage to those that fail to meet the transfer requirement because the agency has a dual career track.

We believe that the issue is primarily an agency staffing decision. If the position is truly one that does not require experience as a firefighter or law enforcement officer, then it should not be a secondary position. However, if there are some duties that do require the experience, the agency should establish two positions—one which contains those duties and requires the experience and a different position which does not contain those duties.

Other commenters pointed out that it is often to the government's advantage to recruit for administrative positions outside the government and that the proposed definition would effectively prevent that. We agree; therefore, we have revised the "mandatory prerequisite" definition from requiring "experience in a primary position" to "experience in a primary law enforcement or firefighting position, or equivalent experience outside the Federal government." Persons with non-Federal experience could qualify and be selected for the job, but would not qualify for early retirement coverage. Non-Federal experience would allow a position to meet the definition of a secondary position. An individual would still have to transfer from a primary position in the Federal service to retain coverage in a secondary position.

Since the revised definition of administrative positions would affect the coverage of many employees, the regulations now provide "grandfather" coverage for those employees who are in a presently covered secondary position on the effective date of these regulations. Employees will retain coverage as long as the employee remains in that position without a voluntary break in service and OPM does not revoke coverage under § 831.909(c).

Some commenters stated that the proposed requirement that an employee in a secondary position who has a voluntary break in service must meet the transfer requirement anew would create a recruiting problem and would be a hardship for employees who leave Federal service and later reenter. The final rule contains the same provision as the proposed rule. The law provides for continued coverage when an employee transfers directly from a primary position to a secondary position. The existing regulations go beyond the statute by permitting an employee who has met the transfer requirement once to be covered in a secondary position even following a subsequent voluntary break in service. The proposed regulations follow the statutory requirement stated above. Further, the purpose of the early retirement provisions is to ensure a young and vigorous workforce. We believe that this purpose is best served by encouraging employees to have a continuous career in the law enforcement and firefighting fields. This requirement refers to all voluntary breaks in service after the effective date of these regulations.

Several commenters stated that the list of evidence that is required from individuals requesting a coverage determination was too detailed. We believe that the information is required so OPM can make an informed decision. Another commenter objected to using the number of arrests made as a criterion. The commenter pointed out that the number of arrests made is not the only measure of a law enforcement officer. We agree; however, arrests are one valid criterion among many and we have retained the requirement to include that information.

Many comments indicated that the December 31, 1987, deadline for requesting a determination for past service was too short. We agree and have changed the deadline in the final regulations to September 30, 1989.

Several commenters objected to the retroactive withdrawal of coverage after an OPM review finds the position no longer warrants coverage. The final

regulations change the effective date of the withdrawal to 30 days after the date of OPM's determination.

An Inspector General commented on the requirement that agency requests must be submitted by the agency head or his or her representative and that in no instance may a person below the level of the agency personnel director be designated as the agency head's representative. The Inspector General pointed out that the proposed regulations could result in potential interference with the independence of the Inspectors General. The final regulations still require statutory Inspectors General to submit requests for coverage through the agency head. However, the head of the agency must forward the requests to OPM.

One commenter asked for clarification of an individual's rights after OPM has made a final decision denying an agency request to cover a position. If an agency request has been denied and an individual believes that his or her individual service merits credit, the employee may still make an individual request under § 831.908.

The proposed regulations clarified that the 7½ percent withholding would not be made by the agency in the case of an employee who is not a primary or secondary law enforcement officer or firefighter but is detailed to a primary or secondary position. Several commenters asked if the converse is also true. The final regulations make clear that the position of record determines the coverage. Therefore, an employee who has been detailed or temporarily promoted from a covered position to a noncovered position continues to be covered. Conversely, an employee detailed or temporarily promoted to a covered position is not covered by the early retirement provisions.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act, these regulations will not have a significant economic impact on a substantial number of small entities because they affect Federal employees and retirees only.

List of Subjects in 5 CFR Part 831

Government employees, Administrative practice and procedure, Claims, Firefighter, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Constance Horner,

Director.

Accordingly, OPM is amending Part 831 of Title 5 of the Code of Federal Regulations as follows:

PART 831—RETIREMENT

1. The authority citation for Subpart I of Part 831 is revised to read as follows:

Authority: 5 U.S.C. 8347.

2. Subpart I is revised to read as follows:

Subpart I—Law Enforcement Officers and Firefighters

Sec.

§ 831.901 Applicability and purpose.

(a) This subpart contains regulations of the Office of Personnel Management (OPM) to supplement 5 U.S.C. 8336(c), which establishes special retirement eligibility for law enforcement officers and firefighters employed under the Civil Service Retirement System; 5 U.S.C. 8331(3) (C) and (D), pertaining to basic pay; 5 U.S.C. 8334(a) (1) and (c), pertaining to deductions, contributions, and deposits; 5 U.S.C. 8335(b), pertaining to mandatory retirement; and 5 U.S.C. 8339(d), pertaining to computation of annuity.

(b) The regulations in this subpart are issued pursuant to the authority given to OPM in 5 U.S.C. 8347 to administer and prescribe regulations to carry out subchapter III of chapter 83, United States Code.

§ 831.902 Definitions.

In this subpart—

"Detention duties" means duties that require frequent direct contact in the detention, direction, supervision, inspection, training, employment, care, transportation, or rehabilitation of individuals suspected or convicted of offenses against the criminal laws of the United States or the District of Columbia or offenses against the punitive articles of the Uniform Code of Military Justice (chapter 47 of title 10, United States Code). (See 5 U.S.C. 8331(20).)

"Firefighter" means an employee, whose duties are *primarily* to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment. Also included in this definition is an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(21).) An employee whose primary duties are the performance of routine fire prevention inspection is excluded from this definition.

"Frequent direct contact" means personal, immediate, and regularly-assigned contact with detainees while performing detention duties, which is repeated and continual over a typical work cycle.

"Law enforcement officer" means an employee, the duties of whose position are *primarily* the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of the United States, including an employee engaged in this activity who is transferred to a supervisory or administrative position. (See 5 U.S.C. 8331(20).) The definition does not include an employee whose primary duties involve maintaining law and order, protecting life and property, guarding against or inspecting for violations of law, or investigating persons other than persons who are suspected or convicted of offenses against the criminal laws of the United States.

"Primary duties" are those duties of a position which—

(a) Are paramount in influence or weight; that is, constitute the basic reasons for the existence of the position;

(b) Occupy a substantial portion of the individual's working time over a typical work cycle; and

(c) Are assigned on a regular and recurring basis. Duties that are of an emergency, incidental, or temporary nature cannot be considered "primary" even if they meet the substantial portion of time criterion.

"Primary position" means a position whose primary duties are (a) to perform work directly connected with controlling and extinguishing fires or maintaining and using firefighter apparatus and equipment; or (b) investigating, apprehending, or detaining individuals suspected or convicted of offenses against the criminal laws of the United States.

"Secondary position" means a position that (a) is clearly in the law enforcement or firefighting field; (b) is in an organization having a law enforcement or firefighting mission: and (c) is either—

(1) Supervisory; i.e., a position whose primary duties are as a first-level supervisor of law enforcement officers or firefighters in primary positions; or

(2) Administrative; i.e., an executive, managerial, technical, semiprofessional, or professional position for which experience in a primary law enforcement or fire-fighting position, or equivalent experience outside the Federal government, is a mandatory prerequisite.

§ 831.903 Conditions for coverage in primary positions.

An employee's service in a position that has been approved as a primary position by OPM or its predecessor, the U.S. Civil Service Commission, is automatically covered under the provisions of 5 U.S.C. 8336(c). An employee who is not in a primary or secondary position and is detailed to a primary position is not covered under the provisions of 5 U.S.C. 8336(c).

§ 831.904 Conditions for coverage in secondary positions.

(a) An employee's service in a secondary position is covered under the provisions of 5 U.S.C. 8336(c) if the employee meets the following criteria:

(1) Employee is transferred directly (i.e., without a break in service exceeding 3 days) from a primary position to a secondary position; and

(2) If applicable, the employee has been continuously employed in secondary positions since transferring from a primary position without a break in service exceeding 3 days, except that a break in employment in secondary positions which begins with an involuntary separation (not for cause), within the meaning of section 8336(d)(1) of title 5, United States Code, is not considered in determining whether the service in secondary positions is continuous for this purpose.

(b) This requirement for continuous employment in a secondary position applies only to voluntary breaks in service beginning after January 19, 1988.

(c) An employee who is not in a primary or secondary position and is detailed to a secondary position is not covered under the provisions of 5 U.S.C. 8336(c).

(d) The service of an employee who is in a position on January 19, 1988 that has been approved as a secondary position by OPM or its predecessor, the U.S. Civil Service Commission, will continue to be covered under the provisions of 5 U.S.C. 8336(c) as long as the employee remains in that position without a voluntary break in service and coverage is not revoked by OPM under § 831.909(c).

§ 831.905 Agency requests for OPM determination of primary positions.

(a) After its analysis of the evidence required under § 831.907(a) (1) though (7) for a current position, an agency will submit a request to OPM for a determination that the duties of the position qualify the position as a primary position. The request for OPM approval must include the required evidence and a detailed statement of the agency's reasons why it believes the position meets the statutory and regulatory requirements.

(b) If the agency request is based on a finding that the primary duties of the position are detention duties which require the incumbent to have frequent direct contact with detainees, the agency will submit the information listed in § 831.907(a) (1) through (6) and (b) (1) through (5) and also a statement supporting its initial determination of "frequent direct contact" for OPM's concurrence in the determination of "frequent direct contact" and for OPM's determination that the position otherwise meets the criteria for a primary position.

§ 831.906 Agency requests for OPM determination of secondary positions.

After its analysis of the evidence listed under § 831.907(c) (1) through (3) for a current position, an agency will submit a request to OPM for a determination that the position meets the criteria for a secondary position. The request for OPM approval must include the required evidence and a detailed statement of the agency's reason why it believes the position meets the statutory and regulatory requirements.

§ 831.907 Evidence.

(a) When an agency makes a request to OPM for a determination that a position is a primary position, the request must be signed by the agency head or his or her representative. In no instance, however, may a person below the level of the agency personnel director be designated as the agency head's representative. A request from a statutory Inspector General must go through the agency head but must be submitted to OPM by the agency. The following documentation must be included in the request:

(1) The official position description annotated to show the percentage of time spent performing the various duties; or, if a position description is not required for the position or the position description is not current, a detailed narrative description of the duties and responsibilities including the knowledges, skills, and abilities required to perform the duties, and all other current agency documents describing the official duties of the position. In addition, if the position description is not current, an explanation as to why the position description has not been revised as well as a timetable for the proposed revision;

(2) The functional statement for the organization where the position is located and the organizational chart showing at least two levels above and below the level of the position;

(3) The critical and non-critical elements and performance standards for the position established by the agency under Part 430 of this chapter (or, if the position is not subject to Part 430, a statement of the effect);

(4) The evaluation statement, if any, explaining the classification of the position;

(5) The agency qualification and medical standards for entry and retention, or a statement that the standards are the same as the X–118 handbook standards;

(6) A statement concerning the current or proposed maximum entry age, if any; and

(7) For law enforcement officers, a list of the provisions of Federal criminal laws the incumbent is responsible for enforcing.

(b) If the agency request for an OPM determination as to whether a position is a primary position is based on an agency finding that the primary duties of the position are detention duties, the agency will include a statement supporting its initial determination of "frequent direct contact" and request OPM concurrence with its determination. This statement must include—

(1) The incumbent's worksite and official duty station, with a description of where contact with Federal detainees occurs;

(2) The frequency of contact with Federal detainees over a daily, weekly, monthly, or quarterly work cycle;

(3) The average duration of these contacts;

(4) The nature of the assigned duties which require the contacts (training, care, rehabilitation, etc.); and

(5) Any other pertinent information.

(c) When an agency makes a request for a determination that a position is a secondary position, the request must be signed by the agency head or his or her representative. In no instance, however,

may a person below the level of the agency personnel director be designated as the agency head's representative. A request from a statutory Inspector General must go through the agency head but must be submitted to OPM by the agency. The following documentation must be included in the request:

(1) The documentation required under paragraphs (a) (1) through (7) of this section; and

(2) For an administrative position, certification that the position requires experience equivalent to that of a primary law enforcement or firefighting position; and

(3) For supervisory positions, certification that the position meets the requirements for a first-level supervisor.

(d) When OPM notifies the agency that official documentation is lacking or insufficient to meet the requirements under paragraphs (a), (b), and (c) of this section, agencies will submit the requested information and may submit any other material deemed appropriate (e.g., awards certificates, job applications, affidavits, job announcements, etc.). If the information requested is not received by OPM in a timely manner, OPM will make a decision based on the information contained in the file.

§ 831.908 Requests from individuals.

(a) The employee bears the burden of proof with respect to credit under 5 U.S.C. 8336(c). The employee must provide the agency, or OPM, with all pertinent information regarding duties performed to include, for law enforcement officers, a list of the provisions of Federal criminal law the incumbent is responsible for enforcing and arrests made; and, for firefighters, number of fires fought, names of fires fought, dates of fires, and position occupied while on firefighting duty.

(b) An employee who is currently serving in a position that has not been approved by OPM as a primary or secondary position, but who believes that his or her service is creditable as service in a primary or secondary position and that he or she satisfies the conditions for credit set forth above must be submitted to OPM through the current employing agency and the employing agency must submit an advisory opinion as to whether the position qualifies as a primary or secondary position. A request for a determination made directly to OPM by an employee, however, will not be accepted. The request will be returned by OPM to the employee for submission to the employee's agency for action. After its analysis of the evidence provided by the employee, the agency will submit a request to OPM for a determination and must include an advisory opinion to OPM as to whether it believes the individual's service in the position should or should not be credited and, if it qualifies, whether it should be a primary or secondary position. The agency's submission must include all evidence required under § 831.907 for a determination of primary and secondary positions.

(c) A current or former employee (or the survivor of a former employee) who believes that a period of past service in an unapproved position qualifies as service in a primary or secondary position and meets the conditions for credit must follow the procedures in paragraph (b) of this section. The request must be made to the agency where the claimed service was performed except as provided in paragraph (d) of this section. Based upon its analysis of official records and the individual's submissions, the agency will submit a request for a determination to OPM along with an advisory opinion as to whether the service should or should not be credited and, if credited, whether it qualifies as service in a primary or secondary position. The agency's submission must include all evidence required under § 831.907 for a determination of primary and secondary positions.

(d) For a current or former employee who performed service at an agency which is no longer in existence and for which there is no successor agency, OPM will accept, directly from the current or former employee (or the survivor of a former employee), a request for a determination as to whether a period of past service qualifies as service in a primary or secondary position and meets the conditions for credit.

(e) Requests received by the employing agency, the agency where past service as performed, or OPM, not later than September 30, 1989, may include any periods of previous service. After September 30, 1989, coverage in a position or credit for service will not be granted for a period greater than 1 year prior to the date that the request from an individual is received by the employing agency, the agency where past service was performed, or OPM. OPM may extend the time limits for filing when, in its judgment, the individual shows that he or she was prevented by circumstances beyond his or her control from making the request within the time limit.

§ 831.909 OPM decisions.

(a) OPM's decision on an agency request for a determination under §§ 831.905 and 831.906 will be issued in writing to the agency following submission of all evidence required by § 831.907 and any other evidence requested by OPM. If OPM approves the position, it will be designated as a primary position or as a secondary position.

(b) OPM's decision on the request from an individual submitted under §§ 831.908 (b) or (c) will be issued in writing to the individual, the current employing agency and/or the agency in which the past service was performed following submission of all evidence requested by OPM.

(c) OPM may revoke approval of a position under paragraph (a) of this section if it determines, through an on-site evaluation, classification review, information provided by the agency, or from any other source, that the formerly approved position no longer meets the requisite definition.

(d) An adverse OPM decision will include an explanation of the basis for the decision and a statement of the applicable reconsideration rights. When OPM's decision is directed to the agency, the agency must inform each employee whose rights or interests under Subchapter III of chapter 83, United States Code, are affected, that the decision of OPM may be individually reconsidered by OPM in accordance with § 831.109. A request for reconsideration must follow the procedures in § 831.908. The notice to each affected employee must include a copy of OPM's written decision, must be duly dated, and a copy must be entered as a permanent record in the employee's official personnel file. If OPM's decision is later reversed, the copy in the official personnel file must be removed.

(e) Agencies may not represent in any way (e.g. position descriptions, vacancy announcements, etc.) that a position is a primary or secondary position if OPM has not so determined with respect to that position.

§ 831.910 Review of approved positions and certification to OPM.

(a) An agency must review a currently approved primary or secondary position wherever there is a significant change that may affect its designation to assess whether, in its opinion, the position continues to warrant approval. The agency must provide certification of the results of the review to OPM.

(b) If an agency finds that a currently approved primary or secondary position no longer warrants coverage, it must

request that OPM revoke the approval. The request must fully explain the material change(s) in the position and state the date the change(s) occurred. The withdrawal of approval is effective 30 days after the date of OPM's notice to the agency. Beginning with the effective date of the revocation of approval, the agency must stop withholding the additional deductions and must inform each affected employee of OPM's action. The notice to the employee(s) must include a full explanation of the basis for OPM's determination, and state the right to request reconsideration of the determination and the time limits for requesting reconsideration in accordance with § 831.109. A request for reconsideration must follow the procedures in § 831.908. Any excess deductions must be refunded to the employee after the expiration of the time limits for requesting reconsideration or exhaustion of the administrative remedies, and upon proper application to OPM.

(c) If the agency abolishes a primary or secondary position, the agency must notify OPM.

§ 831.911 Withholdings and contributions.

(a) Prior to the receipt of OPM's decision that a position is a primary or secondary position, the additional employee withholding for the incumbent of such a position and the agency contribution required by 5 U.S.C. 8334(a)(1) must not be made. Upon receipt of OPM approval of the position, the effective date of the additional withholding and agency contribution is retroactive to the beginning date of covered service in the primary or secondary position.

(b) Whenever it is finally determined that past service of a current or former employee was creditable under the provisions of 5 U.S.C. 8336(c), retroactive employee deductions and matching agency contributions due for such service must be made. The underwithholding of civil service retirement contributions from the employee's pay results in an overpayment of pay. The employing agency must pursue collection under appropriate procedures. The agency is responsible for submitting to OPM the employee's share as well as the agency's share of the additional contributions to the Civil Service Retirement and Disability Fund. This payment must be made within 30 days of the final decision that past service was creditable.

(c) The additional employee withholding and agency contribution for covered or creditable service properly made as required under 5 U.S.C. 8334(a)(1) or deposited under 5 U.S.C. 8334(c) are not separately refundable, even in the event that the employee or his or her survivor does not qualify for a special annuity computation under 5 U.S.C. 8339.

(d) An employee, upon proper application to the agency, or a former employee or eligible survivor, upon proper application to OPM, will be paid a refund, without interest, of erroneous additional withholdings or deposits for service which was not covered service.

(e) While an employee who does not hold a primary or secondary position is detailed or temporarily promoted to a primary or secondary position, the additional withholdings and agency contributions will not be made. While an employee who does hold a primary or secondary position is detailed or temporarily promoted to a position which is not a primary or secondary position, the additional withholdings and agency contributions will continue to be made.

§ 831.912 Mandatory separation.

(a) The mandatory separation provisions of 5 U.S.C. 8335(b) apply to all law enforcement officers and firefighters in primary and secondary positions. A mandatory separation under section 8335(b) is not an appealable action. Section 831.503 provides the procedures for requesting an exemption from mandatory separation.

(b) In the event an employee is separated mandatorily under 5 U.S.C. 8335(b), or is separated for optional retirement under 5 U.S.C. 8336(c), and OPM finds that all or part of the minimum service required for entitlement to immediate annuity was in a position which did not meet the requirements of a primary or secondary position and the conditions set forth in this subpart, such separation will be considered erroneous.

§ 831.913 Reemployment.

An employee who has been mandatorily separated under 5 U.S.C. 8335(b) is not barred from reemployment in any position except a primary position after age 60. Service by a reemployed annuitant is not covered by the provisions of 5 U.S.C. 8336(c).

§ 831.914 Review of decisions.

(a) An initial OPM decision under this subpart issued to an agency as to whether an encumbered position is a primary or secondary position or whether the service of a current or former employee meets the conditions for credit is subject to reconsideration under § 831.109, upon timely request for reconsideration. The 30-day time limit for requesting reconsideration begins on the date of the agency's notification to the affected individual in accordance with § 831.909(d).

(b) An initial OPM decision issued to an employee, former employee, or survivor as to whether a period of service met the requirements of this subpart as service of a law enforcement officer or firefighter during any period of service is subject to reconsideration under § 831.109.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, and 380

[Docket No. RM87-15-000; Order No. 486]

Regulations Implementing National Environmental Policy Act of 1969

Issued: December 10, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule implementing the National Environmental Policy Act of 1969. The Commission's final rule states that the Commission will abide by the regulations of the Council on Environmental Quality (CEQ), 40 CFR Parts 1500–1508 (1987), unless those regulations are inconsistent with the Commission's statutory responsibilities. The final rule also promulgates regulations which supplement the regulations of the CEQ.

EFFECTIVE DATE: This rule is effective January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing a final rule to revise its regulations implementing the regulations of the Council on Environmental Quality

(CEQ) and the National Environmental Policy Act of 1969 (NEPA).[1] The regulations replace and elaborate on existing Commission regulations and procedures under NEPA.[2]

II. Background

Section 102(2)(C) of NEPA provides in part that all Federal agencies must include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement on (i) the environmental impact of the proposed action; (ii) any adverse environmental affects which cannot be avoided if the proposal is implemented; (iii) any reasonable alternative to the proposed action; (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (v) any irreversible and irretrievable commitment of resources which would be involved if the proposed action were implemented. This detailed statement is generally referred to as an Environmental Impact Statement (EIS).

Section 102 also requires that, if agency planning and decisionmaking may have an impact on the human environment, an agency should use a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts to protect unquantified environmental amenities. NEPA also requires that an agency consult with other Federal agencies with jurisdiction by law or special expertise when preparing a EIS.

CEQ published its regulations implementing section 102 of the NEPA on November 29, 1978, in the **Federal Register**.[3] The CEQ regulations state goals and procedures for researching and solving environmental problems.[4]

On May 14, 1987, the Commission issued a notice of proposed rulemaking (NOPR).[5] This NOPR proposed to adopt by reference many of the CEQ regulations and elaborated on policies and procedures of the CEQ. In response, the Commission received 31 comments.[6]

III. Discussion

As a Federal regulatory agency, the Commission does not initiate projects. The Commission's mission is to evaluate applications filed for natural gas, hydroelectric and electric projects. One of the Commission's responsibilities under NEPA is to determine whether an environmental impact statement should be prepared on a project. NEPA requires the preparation of environmental impact statements for major Federal actions that may have a significant impact on the human environment. To make this determination, the Commission (1) is requiring specific information from the applicant on the environmental impacts of the project and (2) has developed specific procedures for evaluating project applications.

All regulatory actions by the Commission are classified in one of three categories for purposes of environmental review: Those projects which normally require an EIS, those projects which normally do not have a significant environmental impact, and are therefore categorically excluded, and those projects for which no generic determination can be made. The latter projects will require an environmental assessment to determine whether they may have a significant impact, and therefore need an EIS, or will not have such an impact, and therefore require no further NEPA review.

These classifications give an applicant guidance on the environmental review that will normally be done on a particular type of project. For projects categorically excluded, the Commission will normally not prepare an EA or an EIS. For projects listed in the EIS category, the Commission will proceed directly to prepare an EIS, or in some situations, will prepare an EA to see if an EIS should be done. For projects listed in the EA category, the Commission will utilize the environmental report filed by the applicant and other information and prepare an environmental assessment. The result of this assessment may be either a finding that the project will not have a significant impact on the environment, followed by Commission issuance of a Finding of No Significant Impact (FONSI), or a decision that the project may have such an impact followed by preparation of an EIS.

Some commenters claim that the Commission did not properly consult with the CEQ in reissuing the NOPR.[7] The Commission disagrees. In addition to incorporating the comments of CEQ in the NOPR, various meetings and discussions were held between the Commission staff and CEQ staff. One outcome of these meetings was the decision by the Commission to issue a new NOPR rather than an immediate final rule, a decision applauded by one commenter, the American Rivers, Inc., Friends of the Earth, American Whitewater Affiliation, and the Izaak Walton League of America (American Rivers, Inc., *et al.*).

This final rule complies with and supplements the CEQ regulations. Since the Commission is voluntarily complying with CEQ regulations, there is no need to address a number of comments that raise the question whether those regulations are binding on the Commission as a matter of law.[8] The CEQ regulations by their terms are not binding on the Commission to the extent they are inconsistent with the Commission's statutory obligations.[9]

The final rule also changes the format of the NOPR, as proposed in the CEQ's comments. In the NOPR, the Commission actually incorporated the CEQ regulations into its own proposed rules, except for some CEQ language that it proposed to modify and a few provisions that it decided not to adopt. In its comments, CEQ points out that specific agency NEPA rules are supposed to supplement CEQ regulations by focusing on the requirements that are particular to each agency, rather than repeat or paraphrase CEQ's general regulations that speak to all Federal agencies.[10] In view of the CEQ's comments, the format of the final rule has been changed to focus on the Commission's particular requirements as a supplement to CEQ regulations, thereby avoiding the unnecessary repetition of general provisions in the CEQ regulations.

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[1] 42 U.S.C. 4321–4370a (1982).

[2] The Commission's current NEPA procedures for hydroelectric and gas projects are combined in the regulations and appendices contained in 18 CFR Part 2.

[3] See 40 CFR Parts 1500–1508 (1987).

[4] The Commission issued a Notice of Proposed Rulemaking (NOPR) in RM79–69–000 on August 20, 1979, 44 FR 50052 (Aug. 27, 1979). The Commission terminated this docket and incorporated the record in RM87–15–000.

[5] 52 FR 20314 (May 29, 1987).

[6] See Appendix A.

[7] See, e.g., Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Panhandle and Trunkline), the Interstate Natural Gas Association of America (INGAA), and American Rivers, Inc., *et al.*

[8] See, e.g., CEQ, California Save Our Streams Council (S.O.S.), American Rivers, Inc., *et al.*, and the U.S. Department of the Interior, Office of Environmental Project Review (Interior). In support of this, these commenters cite Executive Orders 11514 and 11991, the CEQ regulations and court decisions in The Steamboaters v. F.E.R.C., 759 F. 2d 1385 (9th Cir. 1985) and People Against Nuclear Energy v. U.S. Nuclear Regulatory Commission, 678 F.2d 222 (D.C. Cir. 1982), rev'd on other grounds, 103 S.Ct. 1556 (1983). The commenters add that the Commission must adopt all of the CEQ regulations and supplement those regulations with its own NEPA regulations.

[9] 40 CFR 1507.3(b) (1987).

[10] 40 CFR 1507.3 (1987).

A. Projects Categorically Excluded, Subject to an EA, and Subject to an EIS

1. Categorical Exclusion

The CEQ regulations at § 1508.4 define the term "categorical exclusion" to mean a category of actions which do not individually or cumulatively have a significant effect on the human environment. The CEQ regulations allow the Commission to make a finding that certain actions have no such significant effect. If a project is categorically excluded neither an EA or EIS is then required. In the NOPR the Commission listed 31 projects in the categorical exclusion (CE) category. Commenters focused on:

(i) Whether the possibility of an EA was foreclosed because a project was listed in the CE category,

(ii) Suggested projects that should be added to or deleted from the list of projects, or

(iii) Requested clarification of terms describing projects in the list.

As a general response to these comments, environmental review is not foreclosed merely because a project is in the CE category. In addition, in the final rule the Commission is modifying several categorical exclusions, is not adding to the list of projects proposed for categorical exclusion in the NOPR, but is deleting one project from the list.

(a) *Possibility of an EA on a Project Categorically Excluded.* The CEQ is concerned that the nature of the Commission's environmental review of particular projects might be rigidly predetermined by the general classification of such projects. This is a misunderstanding of the Commission's intent. The general classification of a project indicates only how such a project will normally be treated. The classification of a project as categorically excluded, for example, does not automatically foreclose further environmental review in particular unusual circumstances. The existence of unusual circumstances may be manifest from the application itself, or derived from comments by interested persons in response to the application itself (after notice in the **Federal Register**) or from additional information sought by the staff.

The Commission is adopting one commenter's [11] suggestion that the Commission specify the circumstances when an EA or EIS will be prepared for a project normally categorically excluded. The commenter suggests the following exceptions: If the project may have an impact on Indian lands, units of the National Park System, National Wildlife Refuges, National Fish Hatcheries and other fish facilities, anadromous fish, endangered species, wilderness areas, wild and scenic rivers, wetlands, and other ecologically significant or critical areas, or if the environmental effects are uncertain. The situations described by this commenter are examples of projects that may have a significant environmental impact. However, there may be others and, thus, in making this determination, the Commission will not limit itself to only these.

(b) *Proposed Deletions from the CE Category.* Several commenters [12] asked the Commission to remove a number of projects from the list of categorical exclusions in the NOPR. These projects are: (1) Preliminary permits, (2) small conduit hydroelectric projects, (3) actions concerning reservation of lands and classification of United States lands as water power project sites under section 24 of the FPA, (4) annual charges (5) electric rate filings submitted by public utilities under section 205 and 206 of the Federal Power Act, (6) review of natural gas rate filings, including curtailment plans that do not have a major effect on an entire pipeline system, (7) surrender and amendment of water power licenses, preliminary permits and exemptions, (8) proposals to use water power project lands or waters for a variety of activities including piers, boat docks, and landings, and (9) actions which involve solely socio-economic impacts.

The Commission is only deleting one of these projects from the list. The Commission recognizes that any particular project included in the list could, in unusual circumstances, have an adverse effect on the environment. As discussed, the possibility of an EA is not foreclosed merely because a project is listed as a categorical exclusion.

(i) *Preliminary Permits.* Four commenters [13] said that preliminary permits should be removed because feasibility studies done under preliminary permits often involve significant ground distrubance activity. It has been the Commission's experience that preliminary permits rarely involve significant ground disturbance activity and the commenters provide no support for a contrary conclusion. Rather, activities under a preliminary permit generally involve merely field work to gather data on stream flows, resources, and other characteristics of the area. These activities would not have a significant impact on the human environment.

(ii) *Small Conduit Hydroelectric Projects.* Some commenters [14] recommend that the CE for small conduit hydroelectric projects be removed or limited substantially [15] since these projects often involve significant stream flows or major construction activity and the mandatory terms and conditions of fish and wildlife agencies do not constitute adequate environmental review.

By its very nature a small conduit hydroelectric project will not have an impact on stream flows since the water used to generate power is water previously removed from the stream for other purposes, such as irrigation and drinking. After the power is generated, the water is then used for the original purposes for which is was drawn. In addition, small conduit hydroelectric projects use water in existing conduits and are located at previously developed sites. For these reasons the typical project has little or no potential to affect historic sites, aquatic resources, terrestrial resources, or other environmental resources.

(iii) *FPA, Section 24.* Some commenters [16] argue that the CE for the reservation and classification of water power sites under section 24 of the FPA should be removed because the reverse process of rescinding power site reservations can open previously reserved public lands to various types of development. Under section 24, lands

[11] See e.g., U.S. Department of the Interior, Office of Environmental Project Review (Interior).

[12] See generally, the National Marine Fisheries Service (NMFS), American Rivers, Inc., *et al.*, the CEQ, Wisconsin Department of Natural Resources, (State of Wisconsin), Natural Resources Defense Council (NRDC), Washington Department of Ecology, and the Environmental Protection Agency.

[13] See *e.g.*, the NMFS, American Rivers, Inc. *et al*, S.O.S., State of Washington.

[14] *See, e.g.*, NMFS and American Rivers, Inc., *et al.*

[15] Save Our Streams, (S.O.S.) suggested that a categorical exclusion for small conduit hydroelectric proejcts be limited to those which:

a. Will not change the flow regime in the affected stream, canal or pipeline including but not limited to:

1. Rate and volume of flow;

2. Temperature;

3. Amounts of dissolved oxygen and nitrogen to a degree which would adversely affect aquatic life;

4. Timing of release;

b. New power lines not to exceed one mile in length nor located adjacent to a wild or scenic river;

c. No modifications in the existing surface elevation of the existing diversion;

d. No upstream or downstream passage of fish affected by the project.

e. Discharge from powerhouse not more than 300 feet from the toe of the diversion structure;

f. No violation of Federal or state water quality standard.

g. No impact on any site eligible for inclusion in the National Register of Historic Places;

h. No construction in the vicinity of any rare or endangered species.

[16] See, *e.g.*, American Rivers, Inc., *et al.*

owned by the United States can be reserved as water power sites. Once the lands are so reserved, persons who wish to use them for other purposes may apply to the Commission for a determination that these other proposed uses would not damage or destroy the value of the lands as water power sites. The Commission may set restrictions on other uses of these lands to protect their water power value. However, except for determining compatibility with water power uses, the Commission does not approve or disapprove these nonpower developments. They are subject to the jurisdiction of other Federal agencies (such as the Bureau of Land Management which would have to approve any mining project on a reserved site), and it is these other agencies, not the Commission, that would be responsible for NEPA review.

(iv) *Annual Charges.* The Commission finds no support for the argument by S.O.S. that the CE for annual charges payments under section 10(e) of the FPA should be removed. The S.O.S. argues that low annual charges result in the subsidized transfers of Federal land and water resources to developers below market value.

The purpose of section 10(e) is to reimburse the United States Government for the cost of administering Part I of the Federal Power Act and recompensing the Federal government for the use, occupancy and enjoyment of its lands or other property. The Commission's rule governing land use charges has recently been revised to adopt a more accurate measure of the fair market value of the land.[17] As for the Commission's general annual charges, their assessment below a level S.O.S. would like to see hardly represents a transfer of Federal lands to private developers, any more than the Commission's failure to collect fees and charges from S.O.S. for the government's costs of considering its pleadings represents a Federal subsidy to that organization. The assessment of annual charges is purely an administrative function mandated by Congress to recover the Commission's costs. As such, it is appropriately categorically excluded.

(v) *Electric Rate Filings under Section 205 and 206 of the FPA.* The Natural Resources Defense Council (NRDC) argues that approval of electric rate filings under sections 205 and 206 of the FPA should not be in the CE category because they constitute Federal actions subject to NEPA, even though no facilities are being constructed.

It is true that the approval of rate filings constitutes a Federal action. However, the Commission has determined *In the Matter of Monongahela Power Co. et al.,* Docket No. ER87-330-000,[18] that the approval of wholesale electric rates is not a major Federal action significantly affecting the environment and therefore does not necessitate an EIS. This rule merely codifies the *Monongahela* decision.

(vi) *Curtailment.* The NOPR categorically excluded gas curtailment plans that do not have a major effect on an entire pipeline system. The State of Wisconsin argues that the Commission should categorically exclude only those gas curtailment plans that do not cause industries to switch fuels. The Commission recognizes that any curtailment of gas service could cause an industrial customer to switch fuels. The Commission also recognizes that fuel switching can have an impact on air quality. That is why the Commission limited the categorical exclusion for curtailment plans to interim or short-term plans, which do not have a major effect on a pipeline system. Such plans are normally unlikely to result in fuel switching and are thus not likely to have a long-term or widespread impact on air quality. As with all categorically exempted actions staff may seek additional information and perform an EA if circumstances warrant.

(vii) *Surrender and Amendment.* The Washington Department of Ecology and EPA claim that the categorical exclusion for surrender and amendments of water power licenses and preliminary permits should be limited to surrender and amendment of preliminary permits only. These commenters cite the work that must be done to remove hydroelectric facilities and restore the project site to its undeveloped condition. The Commission agrees. In the final rule the Commission is clarifying this CE to limit it to (1) the surrender and amendment of preliminary permits, (2) the surrender of water power project licenses and exemptions where no project works exist or no ground disturbing activity has occurred, and (3) amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operation. These changes will ensure the potential environmental effects from any construction activity due to the surrender or amendment of a license or exemption will be considered.

(viii) *Proposals for Water Power Project Lands.* EPA and NMFS recommend that the categorical exclusion for the use of water power project lands or waters for a variety of activities including utility lines, piers, landings, and boat docks be eliminated, citing the need to study the potential effects on water quality and fisheries.

The Commission disagrees. It has been the Commission's experience that such projects normally do not have a significant effect on the environment. These projects are small and, before filing with the Commission, applicants are required to consult with the appropriate state and local environmental agencies to mitigate any impact.

(ix) *Socio-Economic Impact.* The CEQ objects to the categorical exclusion for projects having solely socio-economic impacts. While it agrees that an EIS is not required for such projects, once they are determined to have only socio-economic impacts, it points out that this standard is not self-defining.

The Commission recognizes that in accordance with the regulations of the CEQ and court decisions,[19] no EIS is required for a project that involves solely socio-economic impacts. However, the Commission agrees with CEQ that apart from specific types of projects that the Commission has already found to have solely socio-economic impacts, it is not self-evident which projects fall into this category. Thus, the Commission is eliminating this specific categorical exclusion in the final rule. In the future, when the Commission finds that a particular activity, not presently included in the CE category, generally involves solely socio-economic impacts, it will amend the CE category to include this particular activity. This will avoid unnecessary environmental review.

(c) *Suggestions for Addition to the CE Category.* Several commenters requested a number of projects be added to the categorical exclusion category or be clarified. In response, the

[17] The Commission recently issued a final rule revising its methodology for assessing Federal land use charges, Order No. 469, Revision of the Billing Procedures for Annual Charges for Administering Part I of the Federal Power Act and to the Methodology for Assessing Federal Land Use Charges, 52 FR 18201 (May 14, 1987). The purpose of this revision was to establish a rate for use of government lands based on fair market value.

[18] In the Matter of Monongahela Power Co., *et al.,* Order Accepting Rates for Filing Without Suspension, Denying Motion to Reject, Granting Waivers, Noting and Granting Interventions, Consolidated Proceedings, Denying Motion for an Evidentiary Hearing, Denying Motion for a Declaratory Order and Granting Exemptions, 39 FERC ¶ 61,350 (June 25, 1987); Order Denying Reh'g, 40 FERC ¶ 61,256 (Sept. 17, 1987).

[19] *See* Como-Falcon Community Coalition, Inc. v. U.S. Dept. of Labor, 609 F.2d 342 (8th Cir. 1979); Image of Greater San Antonio, Texas v. Brown, 570 F.2d 517 (5th Cir. 1978) and Breckinridge v. Rumsfeld, 537 F.2d 864 (6th Cir. 1976).

Commission is clarifying and modifying several categories. In addition, the final rule modifies three categorical exclusions since the Commission is not requiring applicants to file additional information to qualify for the categorical exclusion.[20]

(i) *Uses of Water Power Projects Lands and Waters.* The Edison Electric Institute (EEI) proposed to modify the categorical exclusion for uses of water power project lands or waters, *i.e.*, the lands and waters which encompass the area surrounding the dam, (1) to add radial sub-transmission lines, communication lines and cables and (2) to broaden the structures and activities that could use water power project lands or waters, rather than limiting it to those specifically mentioned in the NOPR. EEI argues that the additions reflect current or anticipated advances in technology and will have no significant environmental impact.

The Commission agrees that radial sub-transmission lines and communications lines and cables should be added to this categorical exclusion. This is because these two additions are similar to electric utility distribution lines, which were included in the CE proposed in the NOPR.

The Commission is not adopting, however, the suggestion that any types of structures and activities that could use water project lands or waters should be categorically excluded. In proposing this CE, the Commission only included the specific types of activities that it believed would not normally have a significant effect on the environment. Any other proposed uses must be studied individually to determine the proper level of environmental review.

(ii) *Abandonment.* Some commenters[21] argue that the categorical exclusion for abandonment in place of minor natural gas pipelines would be of little use since the Commission defined a minor natural gas pipeline as one having short segments of buried pipe with an outside diameter of six inches or less. The commenters state that most six inch pipe has an outside diameter greater than six inches.

The Commission agrees. Therefore, the final rule clarifies that a minor natural gas pipeline is one having short segments of buried pipe with an inside, rather than an outside, diameter of six inches or less.[22]

(iii) *Removal of Minor Surface Facilities.* The Commission disagrees with suggestions that the categorical exclusion for the removal of surface facilities should be expanded to include all surface facilities, not just minor ones, such as taps, valves and metering stations.[23] For example, Texas Gas argues that the removal of a facility as large as a compressor station causes no more harm to the environment than the original construction and that once the facility is removed the land can revert to its former use.

This argument is not persuasive. The removal of a compressor station can involve effects as sedimentation, erosion, and the presence of contaminated hydrocarbons. Consideration may also have to be given to the methods being used to restore the site. For this reason, the Commission is limiting the CE to minor surface facilities.[24] In addition, this categorical exclusion has been modified, since the Commission is not requiring applicants to file additional information to qualify for this categorical exclusion. Specifically, this categorical exclusion is available in those instances where appropriate erosion control and site restoration will occur.[25]

(iv) *CE For Replacement of Essentially Equivalent Design Capacity.* Similarly, some commenters[26] advocate a categorical exclusion for replacement of pipelines of essentially equivalent designed delivery capacity. These commenters argue that such replacement pipelines place no additional burden on the environment because the trench area was already disturbed at the time of the original installation.

The Commission disagrees with this argument. Merely because land was disturbed when the trench was originally dug does not mean that replacing the old pipe with a new pipe will not disturb the environment. Such an action must be assessed in light of current land use and concerns about erosion, sediment control, impact on streams and soils threatened and endangered species and potential PCB contamination.

(v) *Conditions on CE for the Approval of Taps, Meters, and Regulating Facilities.* The Commission proposed a categorical exclusion for the approval of taps, meters and regulating facilities located on a right-of-way where there is an existing natural gas pipeline but only where (1) the land use of the vicinity has not changed since the original facilities were installed and (2) no significant non-jurisdictional facilities would be constructed in association with these facilities. Some commenters argue that these two conditions should be removed.

The Commission is not persuaded by these arguments. First, these commenters claim that the environmental impact of these facilities is insignificant regardless of whether these two conditions exist. The Commissioner disagrees. For instance, if a residential development is now present along the pipeline or if the area has been designated as a park or historic district, then the Commission must determine whether there might be a significant environmental impact to the area resulting from construction of the new facilities. This is also true if significant nonjurisdictional facilities such as cogeneration or other electrical power plants or industrial facilities were being built along with the jurisdictional facilities as an integral part of the same overall project.[27]

Second, the commenters make the arguments that these two conditions should be deleted just as the Commission has categorically excluded certain electric interconnections and wheeling projects that do not entail: (i) Construction of a new substation or expansion of the boundaries of an existing subsection; (ii) Construction of any transmission line that operates at more than 115 kilovolts and occupies more than ten miles of an existing right-of-way; or (iii) Construction of any transmission line more than one mile long if located on a new right-of-way.

This argument is puzzling since there is no inconsistency between the conditions attached to the CE for taps, meters and regulating facilities and

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[20] For a further discussion of this issue, see Section C, Subsection 4, on Submission of Environmental Reports.

[21] *See, e.g.*, the American Gas Association (AGA), Tennessee, Transco, Consolidated and INGAA.

[22] One commenter, the Wisconsin Department of Natural Resources, supports the categorical exclusion for abandonment in place of piplelines only if various local utilities, state public commissions and environmental agencies are notified. The Commission notes that whether a particular person is notified of a project has no relevance to its environmental impact. The Commission reiterates that all project applications reviewed by it are noticed in the **Federal Register**. State agencies can then review the abandonment to determine the potential for groundwater contamination or whether the pipeline could act as a conductor for induced electric current.

[23] In response to a comment, the Commission clarifies that other minor surface facilities, other than taps, metering stations and valves, includes items such as minor surface pipe.

[24] The text of this CE is being modified slightly in the final rule to remove references to tap-related facilities, as an example of a minor surface facility. This in no way changes the CE. It is still available for minor surface facilities, which includes tap-related facilities, and has been done for purposes of clarity.

[25] For further discussion of this issue, see Section C, Subsection 4, on Submission of Environmental Reports.

[26] See, *e.g.*, Enron and INGAA.

[27] See Alice Henry v. F.P.C., 513 F.2d 395 (D.C. Cir. 1975).

those attached to the CE for interconnections and wheeling projects. While the two types of projects are different, the limitations on each CE have the same general purpose—to assure that only those projects that normally have no significant environmental impact are excluded from the requirement for individual environmental assessments. The actual limitations are different in the two cases because the projects themselves are different.

Finally, the commenters state that the taps, meters and regulating facilities located on an existing pipeline's right-of-way can be constructed under a blanket certificate even if the land use in the vicinity has changed since the original facilities were installed or significant non-jurisdictional facilities are constructed in conjunction with the jurisdictional facilities. They argue that the same type of environmental review should apply for these projects whether or not they are constructed under the blanket certificate program. The Commission disagrees. The Commission established the blanket certificate program to provide for expedited construction of routine pipeline projects without prior Commission approval. The procedures used to protect the environment under the blanket certificate program include (i) limiting the types of projects that can be constructed, (ii) requiring applicants to follow the conditions of § 157.206(d), which include guidelines for clearing rights-of-way and constructing facilities above ground and compliance with a wide range of Federal statutes, such as the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.* (1982). The environmental review applicable to blanket certificates is specifically geared to the needs of that program and recognizes that new construction under the program is limited to routine pipeline projects. The same approach to environmental review is not necessarily suitable in other contexts.[28]

(d) *Miscellaneous Projects Proposed For Addition.* The Commission is not persuaded by the comment of Transco that the list of CEs should be expanded to include looping on existing pipelines and making additions to existing pipeline facilities adjacent to or within current rights-of-way, and abandonments or removals of compression facilities where there is no increase in net emissions.

Generally, in the Commission's experience, looping may have significant environmental impacts even when adjacent to an existing right-of-way. These impacts are similar to those described for replacement of existing pipe—namely, possible concerns over land use, erosion and sediment control, the impact on streams, soils, and threatened and endangered species, and the potential for PCB contamination.[29] In addition, in these instances additional right-of-way is being taken and the environmental impacts of that taking must be studied.

One commenter, Texas Gas, asks if looping an existing pipeline on adjacent right-of-way owned by Texas Gas or others, would require an EIS. The ownership of a right-of-way is of little relevance to a project's potential environmental impact. The Commission will generally prepare an EA on these projects to determine whether an EIS is necessary.

Additionally, the Commission cannot generally assume that there is no need to conduct an environmental review of abandonments/removals of compression facilities simply because there is no net increase in emissions. As noted earlier, these actions can have the possible negative effects from erosion, sedimentation, methods used to restore the site and the potential for PCB contamination and therefore will require the Commission to perform an EA.

2. Projects Requiring an EIS

The final rule lists four types of projects for which it normally would prepare an EIS. Comments focused on only two types, *i.e.*, an EIS for major pipeline construction under NGA section 7 where there is no existing natural gas pipeline right-of-way and an EIS for projects at new dams with a total installed capacity of 20 MW or more.

(a) *Major Pipeline Construction.* First, the Commission is not opposed to the suggestion that a Commission EIS should be waived on a major pipeline construction project where the Mineral Management Service (MMS) or other Federal agency has already prepared an EIS in conjunction with the offshore leasing program. However, the Commission can adopt a draft or final EIS prepared by other Federal agencies only if the action previously reviewed and the proposed action are substantially the same, *i.e.*, the same project at the same site.[30] It has been the Commission's experience that EISs prepared by MMS on the offshore leasing program are not geared toward this required site-specific analysis. The Commission notes, however, that it is prepared to act as a cooperating agency, under § 1501.6 of the CEQ regulations, when the MMS is preparing an EIS. Thus, when the Commission is later asked to review a specific project, it would be more familiar with that project, thereby avoiding unnecessary delay.

Second, some commenters urge the Commission to provide a specific definition of a "major pipeline" basing it on the diameter and length of the pipe [31] or the cost of the facilities constructed.[32] Some commenters also suggest that the Commission should initially require an EA rather than an EIS when a major pipeline is constructed in any existing right-of-way.[33]

The Commission does not believe it should define a major pipeline by using specific criteria such as the diameter or length of pipe, or cost of the facilities constructed. These factors are not determinative of the potential impact on the human environment from the project. The Commission must determine whether a project involves major pipeline construction on a case-by-case basis.

The Commission also rejects suggestions to include major pipeline construction in the EA category when it is built in any existing right-of-way, such as railroad, highway or other utility rather than only when it is built in an existing natural gas pipeline right-of-way. The environmental impact of a pipeline project within an existing natural gas pipeline right-of-way can by substantially different and potentially less severe than environmental impact of the same kind of project within the

[28] However, the Commission is adopting two minor revisions to this CE. First, the Commission is requiring that the tap, meter or regulating facility be located completely within the natural gas pipeline's right-of-way. This is being done to assure that no adjacent right-of-way is impacted by the project. Second, this CE is available not only if these three facilities are located completely within a natural gas pipeline's land, but also if they are located completely within a compressor station. The Commission sees no reason to differentiate between where these three facilities could be located for purposes of this CE. The Commission believes that the impact on the environment is insignificant, assuming these two conditions are met, if these facilities are located within a compressor station or a natural gas pipeline's right-of-way.

[29] PCBs (polychlorinated biphenyls) are chemical compounds which have been shown to cause cancer.

[30] *See* CEQ and 40 CFR 1506.3, which state that if the actions covered by the original EIS and the proposed action are substantially the same, the Commission can adopt that statement. In addition, the Commission may, where appropriate, incorporate by reverence state findings and conclusions into Commission NEPA documents. See § 1502.21 of the CEQ regulations.

[31] See Columbia.

[32] See Texas Gas and Enron.

[33] See, *e.g.*, AGA and Columbia.

right-of-way of another utility. For example, an electric utility transmission line may be built in terrain which is inappropriate for a pipeline. Thus, use of that right-of-way would not reduce, and might increase, the environmental effects of a pipeline project constructed within the right-of-way of that transmission line.

(b) *Construction of Dams.* In the NOPR, the Commission provided generally that the construction of new dams would be in the EIS category unless the dams had a total installed capacity of 20 MW or less, in which case an EA would normally be performed to determine whether an EIS was necessary. The rationale for treating dams of less than 20 MWs differently was the Commission's experience that only a small portion of dam projects requiring an EIS involved dams of less than 20 MWs.

Several commenters [34] oppose different treatment for the smaller dams, questioning the significance of the past experience cited in the NOPR. They argue that the electrical capacity of a dam is only one factor among many that could affect its environmental impact.

The final rule eliminates the artificial distinction between new dams with a capacity of more than 20 MW and those with a capacity of less than 20 MW. It recognizes that projects involving proposed new dam construction will normally require an EIS, but that the Commission may sometimes perform an EA to decide whether an EIS is necessary. The dam's electrical capacity will be one factor, among others, that the Commission will consider in specific circumstances to decide whether to do an EA first.

3. Projects Subject to an Environmental Assessment

The NOPR listed 13 actions that would normally require an environmental assessment. Generally, commenters argue that particular projects should be removed from the list or clarified. With the removal from the EA category of hydroelectric projects at new dams with a total installed capacity or 20 MW or less, the final rule lists 12 actions that would normally require an environmental assessment.

(a) *Processing Facilities.* In the final rule, the Commission is clarifying that only processing facilities (i) that are subject to the Commission's jurisdiction or (ii) are an integral part of a project under the jurisdiction of the Commission will be analyzed for their environmental effects. Some commenters [35] had apparently believed that the Commission would analyze all processing facilities.

(b) *Relicense Applications Under FPA Section 15.* The Commission classified relicense applications under section 15 of the FPA in the EA category. The Commission agrees with a commenter [36] maintaining that this classification is consistent with *Confederated Tribes and Bands of the Yakima Indian Nation v. FERC.* [37] Although the court in *Yakima* held that the Commission had in that particular case unreasonably failed to prepare an EIS, it did not hold that an EIS must first be prepared for every relicensing project, notwithstanding the contrary view of the American Rivers, Inc., *et al.* The Commission continues to believe that an EA will normally be necessary to determine whether relicensing applications will require an EIS or will require no further environmental review.

(c) *Blanket Certificates.* Several commenters [38] ask the Commission to stop its practice of preparing an EA on projects constructed under a blanket certificate that cost more than $5.2 million but less that $14.7 million.[39] They argue that eliminating an EA will expedite action. Requiring an EA for construction under a blanket certificate costing between $5.2 and $14.7 million is current Commission policy. In maintaining this practice, the rule imposes no new obligation. Projects costing less than $5.2 million are categorically excluded. The procedures used to protect the environment under the blanket certificate program include (i) limiting the types of projects that can be constructed, (ii) requiring applicants to follow the conditions of § 157.206(d), which include guidelines for clearing rights-of-way and (iii) constructing facilities above ground and compliance with a wide range of Federal statutes, such as the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.* (1982). The environmental review applicable to blanket certificates is specifically geared to the needs of that program and recognizes that new construction under the program is limited to routine pipeline projects. The same approach to environmental review is not necessarily suitable in other contexts. In contrast, the Commission believes an EA is necessary because projects costing between $5.2 million and $14.7 million can have a significant environmental effect and therefore cannot be categorically excluded.

B. Environmental Decisionmaking

1. Preparation of an EA or an EIS by Third Parties

Unless a project is categorically excluded under the Commission's regulations, or classified as a project that will require an EIS, the Commission will prepare an EA to determine the environmental effects of the project. If the Commission concludes after preparing an EA that the project may have a significant effect on the human environment, the Commission will prepare an EIS. One commenter argues that third party contractors should be allowed to prepare an EA. It points out that CEQ regulations allow Federal agencies to permit an applicant to prepare an EA if the agency makes an independent evaluation of the information and takes responsibility for the scope and content of the EA. Similarly, CEQ regulations also permit contractors selected by a lead agency to prepare an EIS in some circumstances.

While the Commission expects to rely on its staff to prepare EAs and EISs in most situations, there may be occasions when it may rely on contractors to play a role in the process of environmental review. To the extent the Commission decides in individual situations to rely on contractors, it will develop procedures to assure independent evaluation by the staff and ultimate Commission responsibility for the scope and content of environmental documents.

2. Reliance on Other Agencies

Some commenters [40] argue that the Commission should sometimes defer its decisionmaking responsibilities to other agencies, which these commenters believe possess more technical expertise. This would mean, for example, that the Commission would rely on the determinations of various fish and wildlife and water quality agencies when evaluating the impacts of a proposed project on these resources. The Commission has not adopted this suggestion, since it has the responsibility to analyze the environmental impacts of a proposed pipeline, hydroelectric or electric project under the jurisdiction of the Commission. Moreover, the Commission

[34] See, *e.g.*, S.O.S., Friends of the River, and American Rivers, Inc., *et al*

[35] *See, e.g.*, Panhandle Eastern and Trunkline.

[36] *See*, the Edison Electric Institute.

[37] 746 F.2d 466 (9th Cir. 1984).

[38] *See*, Enron and AGA.

[39] The projects constructed are defined in §§ 157.202(b) (2), (3) and (6) of the Commission's regulations. Projects exceeding $14.7 million in costs cannot be constructed under a blanket certificate. Projects below $5.2 million constructed under a blanket certificate are categorically excluded.

[40] *See, e.g.*, Enron, Panhandle and Trunkline.

has the expertise and staff resources to satisfy this responsibility and court decisions such as *The Steamboaters v. FERC*[41] have clarified that the Commission cannot evade its NEPA responsibility by relying on another agency's environmental judgment. Certainly, the Commission will consider the comments and studies of other agencies in making those determinations. However, the Commission remains ultimately responsible for the environmental review mandated by NEPA for actions under its jurisdiction.

3. Finding of No Significant Impact

At the conclusion of the environmental assessment (EA) stage, the Commission will make one of two determinations. The Commission will either make a Finding of No Significant Impact (FONSI) or determine that the project may be a major Federal action having a significant effect on the human environment and thus proceed to prepare an EIS. The Commission will generally issue a FONSI on a project if proposed mitigation measures will render a project's environmental impacts insignificant. The Environmental Protection Agency (EPA), American Rivers, Inc., *et al.* and the National Marine Fisheries Service (NMFS) argue that where mitigation measures are cited to support a FONSI, the Commission should provide a review procedure before issuing the FONSI, during which agencies and the public may comment on the effectiveness of the proposed mitigation measures. The Commission sees no need to provide a comment period before deciding on the effectiveness of the mitigation measures used. Neither the CEQ regulations nor court decisions mandate such a comment period.[42] In addition, parties to the Commission's licensing or certificate proceedings have available other procedures, such as a petition for rehearing under Rule 713 of the Commission's Rules of Practice and Procedure, for presenting their views to the Commission also on the adequacy of mitigation measures.

The Commission describes in an EA how the mitigation measures proposed will render the environmental impact of a project insignificant. The Commission agrees with commenters that mitigation measures must consist of more than vague statements of good intentions. Mitigation measures must provide concrete solutions to negate potential environmental impacts. The other issued for the license or certificate will state mitigation measures adopted by the Commission.

4. Issues Involved in Preparing an EA

(a) *Consideration of the Environmental Effects of Non-Jurisdictional Facilities.* When the Commission considers the environmental impact of a project subject to its jurisdiction, it also considers the environmental impact of nonjurisdictional facilities which are to be constructed with, or are an integral part of, the project involving jurisdictional facilities. The Commission does this because Commission precedent, case law,[43] and the CEQ regulations require the Commission to consider the environmental impact of an entire project when considering whether to approve the portion of the project under the jurisdiction of the Commission. Some commenters[44] are concerned the Commission would use the EA process to exercise jurisdiction over non-jurisdictional facilities.

Although the Commission understands the commenters' concern, it believes they are unfounded. The Commission does not intend to exercise jurisdiction over nonjurisdictional facilities and is not using this process to exercise such jurisdiction. However, to ignore the environmental impact of these facilities when they are an integral part of an entire project that includes jurisdictional facilities would be to take too narrow a view of the Commission's NEPA responsibilities.

(b) *Cumulative Impacts.* The final rule states that the Commission will comply with the definition to the term "cumulative impact" in the CEQ regulations. Under this definition, "cumulative impact" is the effect on the environment which results from the incremental impact of the action when added to past, present and reasonably foreseeable effects of future actions regardless of the agency or person undertaking such actions. This definition is consistent with current Commission practice of assessing cumulative impacts.

Several commenters state that the Commission's interpretation and procedures in the hydroelectric area were contrary to the definition of cumulative impact in that two or more pending applications for hydroelectric projects were not a prerequisite for cumulative analysis.[45] The Commission has not said that it would do a cumulative impact analysis only when two or more projects are pending at a given river basin or waterway. The commenters correctly point out that, under the CEQ regulations, the cumulative impact of all "past, present and reasonably foreseeable future actions" must be assessed in determining the significance of the action.

(c) *Denial of an application based on an EA.* The final rule permits the Commission to deny an application on the merits either because the project is not viable or because the project will have significant adverse environmental impacts and mitigation measures to avoid these impacts are either nonexistent or impractical. Several commenters[46] agree with the Commission that an EIS is not necessary when a project is denied at the EA stage.

The rule does not adopt the suggestion of Tennessee Gas Pipeline to prepare an EIS in these situations if the applicant requests that one be prepared. An EIS is required only if a Commission action may have a significant effect on the environment. Where the project has been denied on the merits at the EA state, there is no longer a proposed Federal action that may have a significant environmental effect.

The rule adopts the suggestions of several commenters, *e.g.*, Enron, that where the Commission denies an application at the EA stage for environmental grounds, the Commission will provide an applicant with an explanation of the denial and continue to make the environmental review part of the applicant's record.

5. Preparation of an EIS

(a) *Format.* The final rule adds to the essential[47] elements required for an EIS under the CEQ regulations,[48] to include a staff conclusion section and a bibliography section, citing the literature reference in the EIS.[49] Some

[41] 759 F.2d 1383 (9th Cir. 1985).

[42] For a more detailed discussion on the suggestion for a 30-day comment period prior to Commission action on an EA or FONSI, see the section on Public Participation.

[43] Alice Henry v. F.P.C., 513 F.2d 395 (D.C. Cir. 1975), as later discussed in Silentman v. Federal Power Commission, 566 F.2d 237 (D.C. Cir. 1977).

[44] See, *e.g.*, INGAA and AGA.

[45] See, *e.g.*, CEQ, NMFS, and Wisconsin Department of Natural Resources.

[46] See, *e.g.*, CEQ and S.O.S.

[47] The CEQ regulations require a cover sheet, summary, table of contents, list of preparers, list of agencies, organizations and persons to whom copies of the statement are sent and an index. The CEQ regulations also required the substance of the sections on purpose and need for the action, alternatives, affected environment, environmental consequences and the appendices, if any.

[48] 40 CFR 1502.10 (1987).

[49] In response to a comment the Commission clarifies that the page limits on an EIS, *i.e.* normally less than 150 pages and less than 300 pages for proposals of unusual scope or complexity, does not include material incorporated by reference.

commenters [50] questioned whether the Commission should add these sections to the CEQ regulations and more specifically questioned why the Commission was adding a staff conclusion section since the CEQ regulations do not differentiate between the staff of an agency and the agency itself.

The Commission believes that these additions are necessary. First, the CEQ regulations encourage an agency to supplement the prescribed CEQ format to meet specific agency needs, as long as the format complies with the CEQ.[51] Second, these additions are made to conform the regulations to the Commission's current practice and to clarify that an environmental statement made by staff is not a statement of the Commission until it is accepted by the Commission.

(b) *Purpose and Need and Consideration of Alternatives.* An EIS contains a purpose and need statement and a consideration of alternatives. Several commenters [52] are concerned that if the applicant submits a statement of purpose and need, the statement will control and limit the number of alternatives considered by the Commission in evaluating the project. The Commission emphasizes that it will evaluate the purpose and need for a project on an individual project basis. It does not intend to be bound by and will not accept without further evaluation the purpose and need statement supplied by the applicant.[53]

The final rule includes provisions, supported by many commenters,[54] that the Commission will consider all reasonable alternatives, including the no-action alternative and alternatives outside of the jurisdiction of the Commission, when evaluating a project.[55] Some commenters [56] argue that this will cause undue delay and would result in undue costs. The Commission disagrees. It has been the Commission's experience that the consideration of all reasonable alternatives, as is the Commission's present practice and as required by CEQ regulations, does not unduly delay the issuance of environmental documents or add substantially to the cost of preparing those documents.

S.O.S. suggests that the Commission list the minimum number of alternatives that would be considered on each project. It argues that the Commission, in addition to considering the alternative of disapproval of a project, should also consider a location alternative, a size alternative, a source alternative, a fuel alternative, and a delay alternative for each project.[57] The Commission does not believe that it should require these alternatives to be considered on every project. Generally, depending on whether the project considered is a natural gas, electric or hyroelectric project, the Commission has considered the alternatives suggested by S.O.S. However, these alternatives may not be appropriate for every project. Thus, in the final rule, the Commission recognizes the alternatives mentioned by S.O.S. as illustrative of the alternatives that the Commission may consider on each project.

The Commission considers these alternatives in the context of whether to approve or dispprove the project application. Some commenters, *e.g.* the P.C.L., objected to this. However, this practice simply reflects the Commission's regulatory mission. The Commission does not initiate projects. It merely approves projects, with or without modifications, or disapproves projects.

C. General Procedures

1. Commission Personnel Responsible For Implementing NEPA

In general, the preparation of NEPA documents on natural gas projects is done by the Office of Pipeline and Producer Regulation. The preparation of NEPA documents on hydroelectric projects is done by the Office of Hydropower Licensing.

The Department of the Interior asked the Commission to designated one person responsible for the Commission's NEPA compliance. The Commission's General Counsel or his or her designee, on behalf of the Commission, will be responsible for the overall review of the Commission's compliance with NEPA, except for issues in formal proceedings pending before an administrative law judge or the Commission acting as a collegial body.

2. Pre-filing Consultation

The final rule continues present Commission practice by requiring an applicant to consult, prior to filing, with appropriate Federal, regional, state and local entities.[58] During the consultation process, an applicant generally submits the application to the appropriate Federal, state or local agency and supplies the agency with information requested on the project. In addition, the Commission is complying with §§ 1501.2(d)(2) and 1502.5(b) of the CEQ regulations. Implementing these regulations does not change the Commission's current pre-filing consultation procedures.

Some commenters [59] argue that pre-filing consultation may be appropriate for larger, more complex projects requiring an EA or EIS, but that prefiling consultation is unproductive and could cause delay of routine projects. In contrast, the Commission agrees with other commenters [60] who point out that identifying environmental problems, through pre-filing consultation, facilitates the consultation with various environmental bodies required of the Commission under section 102(2) of NEPA, the Federal Power Act, and other statutes. Applicants also benefit from this process. The more work done before an application is filed, the less time the Commission is likely to need to process the application.[61]

The pre-filing consultation provision, however, does not require an applicant to wait indefinitely for an environmental agency to complete its review before submitting its application to the Commission. The rule requires the applicant to make a good faith effort to consult. In some circumstances, Congress has imposed time deadlines on

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[50] See *e.g.*, American Rivers, Inc. *et al.*

[51] 40 CFR 1502.10 (1987).

[52] See *e.g.*, S.O.S., Department of the Interior, CEQ and American Rivers, Inc., *et al.*

[53] The Washington Department of Ecology had questioned whether the Commission considers the effect of the project on current electric rates when evaluating the need for licensing a hydroelectric project, in an area where a regional power surplus exists. This is current Commission policy. The Commission considers the effect on electric rates over the life of the project when it evaluates the economic feasibility of the project. This evaluation involves comparing the cost of the hydroelectric project to the least expensive reasonable alternative power source.

[54] See *e.g.*, S.O.S., Planning and Conservation League (PCL).

[55] In response to one commenter, when a reasonable alternative arises from the hearing process, the Commission's practice is to supplement the EIS, thereby ensuring that all alternatives considered by the Commission are included in environmental documents.

[56] See *e.g.*, Colorado Interstate.

[57] S.O.S. did not specify the context it was using the terms "source alternative" or "fuel alternative", thus making it difficult for the Commission to respond.

[58] *See, e.g.*, the current Appendix B of Part 2, for the consultation required for natural gas projects and § 4.38 of the Commission's regulations for the consultation required of hydropower applicants.

[59] *See, e.g.*, Texas Eastern Transmission Corporation (Texas Eastern) and AGA.

[60] *See* The Washington Department of Ecology (State of Washington).

[61] In addition, as discussed in § 380.3(b) (4) and (5), an applicant must continue to make a good faith effort to:

(1) Submit applications for all Federal and state approvals as early as possible in the planning process; and

(2) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

such consultations.[62] Even where no explicit deadlines exist, applicants will be permitted to file with the Commission if they can demonstrate their own good faith efforts to consult an undue and unjustified delay by the appropriate environmental agency.

One commenter, the American Rivers, Inc., *et al*, suggests more involvement by the Commission staff in pre-filing consultation and the preparation of environmental documents prior to an application being filed. The Commission has not adopted these suggestions. First, the Commission's implementation of the statutory provisions of NEPA and the FPA and the requirements under § 4.38 of the Commission's regulations meet the letter and spirit of the CEQ provisions. Second, the CEQ consultation regulations do not require the Commission to prepare environmental documents before an application has been filed.[63]

3. Preparation of Studies

Under the final rule, an applicant must also conduct those studies that Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources. The rule continues current Commission practice. Several commenters,[64] primarily representing regulated natural gas entities, argue that guidelines are needed to ensure that staff requests only information which is necessary and relevant, and studies that are justified, and avoid delays. For example, they suggest that the Commission specifically explain what studies or data could be requested; who could request the studies—the Commission or staff; what procedures would be established for protesting studies as too burdensome or costly; and when studies could be requested. The Commission is sympathetic to the concerns of these commenters and agrees that the staff should request only such information and studies as are necessary for a full environmental review. However, since the types of data and studies needed vary widely with the resources affected, it is unlikely that generic guidelines, that would be useful and applicable to the various jurisdictional activities regulated by the Commission, could be developed. If a person believes that a study or data request by the staff is unduly burdensome or otherwise inappropriate, it may ask the Commission for relief by filing a petition under the provisions of Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207.[65]

4. Submission of Environmental Reports

As proposed in the NOPR, the final rule continues the current practice of requiring an applicant to submit an environmental report (ER) for actions that require an EA or an EIS. The ER provides basic environmental information on the project.

The ER for hydroelectric projects must contain the information in 18 CFR Part 4.[66] The information in this ER varies depending on the type of project, but generally includes a description of the project area, and reports on water use and water quality, fish and wildlife resources, historic and archaeological resources, and recreational resources.

The environmental report for any natural gas project requiring an EA or EIS, except for prior notice filings under § 157.208,[67] must contain the information specified in Appendix A of Part 380.[68] This ER includes: (1) A description of the proposed action and the existing environment; (2) the environmental impact of the proposed action; (3) the measures proposed to enhance the environment or to guard against or mitigate adverse environmental effects; (4) any unavoidable adverse environmental effects; (5) the relationship between the short and long-term uses of the environment; (6) any irreversible and irretrievable commitment of resources; (7) the alternatives to the proposed action; and (8) any permits or other compliance required with Federal, State, or local regulations or statutes.

Normally projects placed in the categorical exclusion (CE) category are not required to be accompanied by an ER. However, the Commission proposed that for three actions in the CE category an applicant should provide certain additional information.[69] These three projects were (i) the approval of taps, meters, and regulating facilities located within a right-of-way where there is an existing natural gas pipeline, (ii) the abandonment in place of a minor natural gas pipeline, and (iii) the abandonment by removal of minor surface facilities.

For these three types of projects, applicants were asked to provide a brief explanation of why the application qualified for a CE and to provide environmental information sought by the Commission or its staff.

Some commenters[70] object to requiring this information. They argue that this requirement will increase costs and delays.

The Commission included these projects in the CE category on the basis of experience indicating they normally do not have a significant environmental impact. However, the Commission proposed requiring ER's for these projects because some individual projects within these categories could pose environmental concerns. In the final rule, the Commission has decided to condition the CE covering minor surface facilities to require appropriate erosion control and site restoration. While the final rule no longer requires an ER with all applications for these types of projects at issue, thereby treating them like other projects in the CE category, applicants have a continuing responsibility to provide sufficient information to show appropriate erosion control and site restoration at minor surface facilities, and to meet requests by the staff for environmental information in specific circumstances.

5. Abbreviated Report

The final rule adopts the proposal to eliminate the provisions in current Commission guidelines that allow an applicant to file an "abbreviated report" (AR) to support the conclusion that a natural gas proposal would not be a major Federal action significantly affecting the quality of the human environment. Commenters argue that the Commission should continue to allow

[62] For example, see section 401 of the Clean Water Act, 33 U.S.C. 1341 (1982).

[63] Section 1501.2(d)(2) provides generally that Federal agencies should consult early with appropriate state and local agencies, Indian tribes and with interested private persons and organizations when the agency's own involvement is reasonably foreseeable. The second sentence of § 1502.5(b) states that Federal agencies are encouraged to begin preparation of environmental assessments or environmental impact statements prior to an application being filed preferably jointly with applicable state and local agencies.

[64] See, *e.g.*, Tennessee Gas (Tennessee), Lone Star, Pacific Gas Transmission (PGT), Enron, Consumers Power (Consumers) and Columbia Gas.

[65] The Commission is not aware of any such petitions being filed.

[66] The Commission is eliminating the current Appendix A of Part 2 of the Commission's regulations because the requirements for an environmental report for specific hydropower projects can be found in Part 4 of the Commission's regulations.

[67] The environmental report requirement for prior notice filings is contained in § 157.208(c)(11) of the Commission's regulations.

[68] Appendix A of Part 380 is currently Appendix B of Part 2 of the Commission's regulations.

[69] An abandonment in place of a minor natural gas pipeline involves Commission approval to discontinue the use of the pipeline to transport gas and to leave the pipeline in the ground. The Department of Transportation, Office of Pipeline Safety, has regulations on procedures for abandonment of pipelines. An abandonment by removal, involves physically removing the facility from the site.

[70] *See, e.g.*, Panhandle Eastern and Trunkline, Texas Gas, Columbia and INGAA.

the abbreviated report.[71] They reason that the report allows the Commission to concentrate on significant issues without spending time compiling data which will not change the final determination.

The commenters misinterpret the effect of the elimination of the AR on the amount of environmental documentation an applicant must file. Under the AR provision, an applicant was still required to file information on the items currently described in Appendix B of Part 2. However, some applicants attempted to use the AR provisions to file brief conclusory statements, that their projects would not have a significant effect on the environment. Such statements were of little use to the Commission staff. Staff then had to request the appropriate information in Appendix B. So, the elimination of the AR will not require applicants to file any more information than in the past and will avoid the confusion that occasionally arises under existing regulations. As in the past, applicants are expected to tailor the amount and character of the environmental information they provide to the possible environmental effects of the project.

6. Time Limits On Preparation of Environmental Review

Several commenters[72] argue that the Commission's NEPA processes would be improved if the Commission set fixed time limits on the preparation of an EA, the completion of an EIS and the entire NEPA process. The time limits suggested ranged from 30 days to nine months to prepare an EA, to 18 months after an application is filed to prepare an EIS.

The Commission has reviewed these various suggestions and has concluded that general time limits for completion of the NEPA process are simply not feasible. The time required to prepare an individual EA may vary considerably depending on the sufficiency of the initial application or the complexity of the project proposed.

The Commission believes that a more reasonable approach is one suggested by five commenters,[73] and now followed as a normal part of the Commission's environmental review procedure—namely, the approach of telling an applicant who asks in specific circumstances, the approximate timeframe in which NEPA documents needed to evaluate the action will be completed. The Commission also notes that § 1500.5 of the CEQ regulations encourages steps to reduce delay in the NEPA process and that the Commission will be guided by that objective.

7. CEQ Referral

The NOPR proposed not to accept Part 1504 of the CEQ's regulations, which provides a mechanism for referring disputes to the CEQ concerning major Federal actions that might cause unsatisfactory environmental effects. Several commenters[74] disagree with the Commission's proposal and argue that the referral process could be helpful to the Commission and is not a threat to the Commission's autonomy.

The Commission wishes to cooperate as much as possible with other Federal agencies that may have a legitimate interest in significant environmental issues within the Commission's jurisdiction.[75] However, the purpose of these regulations is to set out the Commission's procedures implementing NEPA. The regulations do not purport to deal with the authority of other agencies to refer to the CEQ disputes involving major Federal actions within the Commission's jurisdiction or the authority of the CEQ to accept such referrals. In its comments, the CEQ notes that any recommendations it would make as a result of such a referral would not be binding on the Commission. Moreover, no trial-type proceeding has ever been referred to the CEQ by other agencies. Under the circumstances, the Commission cannot conclude that the referral provision would necessarily conflict with the Commission's obligation to provide a fair hearing to the parties in trial-type cases and to make its decision on the basis of the evidentiary record. The Commission reserves the right not to participate in a CEQ referral in circumstances where doing so would conflict with its adjudicatory responsibilities. The CEQ recognizes that its regulations are not binding to the extent they are inconsistent with an agency's statutory obligations.

8. Monitoring and Enforcement

Despite the existence of the Commission's present monitoring and enforcement program, several commenters[76] interpret the NOPR to claim that the Commission's responsibility to monitor and enforce mitigation measures, where applicable, is discretionary. This was not the Commission intent. The Commission recognizes it has an obligation to adopt a monitoring and enforcement program where applicable for any mitigation.

D. Public Participation

Commenters raised several issues concerning public participation at the EA or EIS stage. The issues raised included who would publish the notice of availability of an EIS, the Commission or the EPA; the availability or an EA or FONSI for public comment prior to Commission action; whether the Commission's regulations should provide for a minimum of 30 days to consider a final EIS before Commission action; the possibility of making an EA or EIS available at regional offices; the Commission's present intervention procedures in trial-type proceedings; and the use of NEPA documents in administrative proceedings.

1. Publication of the Notice of Availability of an EIS

In the NOPR, the Commission proposed to publish a notice of an EIS if the Environmental Protection Agency (EPA) fails to publish this notice, in accordance with § 1506.10 of the CEQ regulations, within 15 days after filing with EPA This CEQ section requires the EPA to publish in the **Federal Register** each week a notice of the environmental impact statements filed by Federal agencies in the preceding week.

The Commission proposed these provisions in the unlikely event that EPA, because of unforeseen problems, failed to meet time frames. The EPA and other commenters, such as CEQ, object to this proposal. First, the commenters state EPA has the obligation to publish the notice of availability of an EIS under CEQ regulations.[77] Second, the commenters state that the Commission's fears are unfounded because the maximum number of calendar days which normally expire between the official filing of an EIS and publication by EPA of the official notice, is twelve. In light of the comments, the Commission no longer sees the need for the proposed provisions providing for a

[71] *See, e.g.*, exas Eastern, Panhandle Eastern and Trunkline, and INGAA.

[72] See *e.g.*, Lone Star; Transcontinental Gas Pipeline Corporation (Transco); Texas Eastern; INGAA; Pacific Gas and Electric Company (PG&E); AGA; Enron; Consumers Power; and Panhandle Eastern and Trunkline.

[73] See, *e.g.*, Panhandle Eastern and Trunkline.

[74] See, e.g., American Rivers, Inc., *et al.*, CEQ and Friends of the River.

[75] In addition, section 10(j)(2) of the Federal Power Act, 16 U.S.C. 803(j)(2), requires the Commission and fish and wildlife agencies to coordinate in an attempt to resolve any inconsistencies between the recommendations of the fish and wildlife agencies and the purposes and requirements of Part I of the Federal Power Act or other applicable law.

[76] See, *e.g.* American Rivers, Inc., *et al.*, CEQ and the State of Wisconsin.

[77] Under the CEQ regulations the time frame for actions on a draft or final EIS in § 1506.10, *i.e.*, 90 days on a draft EIS and 30 days on a final EIS, begins upon publication by EPA of the notice of availability of the EIS.

back-up notice in case EPA fails to provide it.

2. Public Comments on EA's and FONSI's

In the NOPR, the Commission proposed to continue its current practice of giving notice of availability of an EA and of a FONSI in the order it issues on the project application. In addition the Commission will publish in the **Federal Register** some notices of the availability of EA's and FONSI's beyond those dealing with matters of national concern which are required to be published under the CEQ regulations. Some commenters [78] request the Commission make an EA or FONSI available for public review and comment in every case at least 30 days prior to Commission action. The commenters argue that the current Commission practice does not adequately foster NEPA goals of encouraging and facilitating public involvement in decisions which affect the quality of the human environment. The commenters add that meaningful public participation cannot be accomplished through agency rules which allow for decision to be made without notice to the public of the basis for the decisions.

The Commission has not adopted a strict 30-day period of notice and comment on an EA or FONSI on every project prior to Commission action. Neither the CEQ regulations nor court decisions interpreting NEPA specifically require the Commission to provide such a comment period.[79] However, on individual projects the Commission may adopt this suggestion. In addition, the Commission is implementing § 1501.4(e)(2) of the CEQ regulations and thus will make a FONSI available for 30 days prior to taking any action on a proposal that normally requires the preparation of an EIS or where the proposed action is without precedent.

Some commenters [80] state that the Commission is not implementing the CEQ provisions in 40 CFR 1506.10 requiring, in most circumstances, a minimum 30-day period between notice of the final EIS and Commission action. The commenters argue that without this notice public participation is denied and the potential for project delay is created through appeals to Commission orders. The commenters misinterpret the Commission's proposal. The Commission is complying with this section of the CEQ regulations. However, the CEQ regulations permit the Commission to issue the final EIS concurrently with a Commission order if a person has an opportunity to alter that decision by an appeal to the Commission.[81] That opportunity exists in the Commission's rehearing procedures in Rule 713 of the Commission's Rules of Practice and Procedure.[82] Parties in a Commission proceeding may petition for rehearing as a matter of right. In fact, a rehearing request must be filed before seeking judicial review of a Commission decision.[83] In general, the Commission considers and responds to the points made in a rehearing petition. In that response, the Commission will either agree or disagree, based on the merits of the petition and the relief sought, or clarify the final order.

3. Availability of an EA or an EIS at Regional Offices

The final rule adopts the proposal to make EAs and EISs available at regional offices on a case-by-case basis. Two commenters, the P.C.L. and Friends of the River, argue that every EA or EIS should be available at regional offices. The Commission recognizes it would be convenient to the public if EAs and EISs were routinely made available at regional offices. However, the costs and administrative burden of such a practice would be prohibitive and disproportionate to the public benefits. For a reasonable fee, environmental documents are available through the Division of Public Affairs and Legal Reference, 825 North Capitol Street NE., Washington, DC 20426, (202) 357–8118.

4. Motion to Intervene

A person may become a party to a proceeding by filing a motion to intervene under Rule 214 of the Commission's Rules of Practice and Procedure.[84]

Some commenters[85] express the concern that the proposed rule would permit unsubstantiated evidence and opinions on environmental issues to be admitted into evidence in trial-type proceedings without the opportunity for cross-examination. Other commenters complain that non-parties who may have an interest in the environmental issues may be excluded from the environmental review process.

Both comments misinterpret the Commission's position. Rule 214 of the Commission's Rules of Practice and Procedure requires a person to file a motion to intervene in order to become a party to a proceeding. Parties to a proceeding can introduce evidence at a formal hearing. This does not mean that only the views of parties are considered by the Commission. All comments received on a draft EIS are reviewed and responded to in a final EIS regardless of whether the commenters are intervenors in the proceeding. The EIS becomes a part of the record of the proceeding.

5. Use of NEPA Documents in Administrative Proceedings

One commenter, the NMFS, wants the Commission to discuss how environmental documents will be included as part of the record in an informal adjudication and formal rulemaking. The commenter wants such documents included in the record of an informal adjudication in the same manner as for informal rulemakings, and the documents included in the record of formal rulemakings in the same manner as for formal adjudications.

In an informal rulemaking the notice of a draft EIS, or EA with a FONSI, will be included in the notice of proposed rulemaking. A final EIS will be published prior to or simultaneously with a decision on the final rule. For adjudicatory proceedings, and EA or an EIS will be included as part of the record of the proceeding. Since the Commission does not use formal rulemaking, it need not establish procedures for formal rulemakings.

An informal adjudication is an adjudicative proceeding where a formal trial-type hearing has not been held.[86] Such proceedings are normally associated with the issuance of a natural gas pipeline certificate or hydroelectric license. In these situations, the Commission will make environmental documents available as discussed in this rule, *i.e.*, notice of an EA or an EA with a FONSI will be published in the Commission order and may be published in the **Federal Register.** A draft and final EIS will be made available as described in the CEQ procedures at § 1506.10.

NMFS states that NEPA requires the Commission to consider an EIS regardless of whether the EIS is introduced into the record of a formal

[78] *See, e.g.*, the Izaak Walton League and NMFS.

[79] National Ass'n of Gov't Employees v. Rumsfeld, 418 F.Supp 1302 (E.D.Pa. 1976); Friends of the Earth, Inc. V. Butz, 406 F.Supp. 742 (D. Mont. 1975); Como Falcon Coalition v. U.S. Dept. of Labor, 465 F.Supp. 850 (D. Minn. 1978).

[80] See, *e.g.*, Izaak Walton League.

[81] 40 CFR 1506.10 (1987).

[82] See Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327 (D.C. Cir. 1985).

[83] Section 313(a) of the Federal Power Act, 16 U.S.C. 825*l*(a) (1982) and section 19(a) of the Natural Gas Act, 15 U.S.C. 717r (1982).

[84] 18 CFR 385.214 (1987).

[85] See, *e.g.*, Izaak Walton League and the State of Wisconsin.

[86] Sierra Ass'n for Environment v. FERC, 744 F.2d 661 (9th Cir. 1984).

adjudicatory hearing in making its decision. The Commission agrees. An EIS will be introduced into the record of the adjudication considering the project for which an EIS has been performed. In all situations where an EIS has been prepared, the Commission will consider and review the alternatives included in the EIS in reaching its decision.

E. Miscellaneous Issues

1. National Historic Preservation Act (NHPA)

The Department of the Interior urges the Commission to add regulations to implement the National Historic Preservation Act and the regulations of the Advisory Council on Historic Preservation (Advisory Council). In the NOPR, the Commission stated that insofar as NHPA compliance could be achieved through the NEPA process, the Commission would use that process. The Commission believes that it is unnecessary to add specific regulations for NHPA. The Commission now requires information on historic sites in an ER and consults with and reviews comments of the Advisory Council before it approves a project that may affect a historic or cultural site that is included in or eligible for inclusion in the National Register of Historic Places. Thus, the Commission has incorporated the substance of the NHPA into its procedures.

2. Comprehensive Plans

The State of Wisconsin requests clarification on the relationship between a comprehensive plan under FPA section 10(a) and an EIS or EA when the Commission consider an application for a hydroelectric project.

An EA or EIS conducted pursuant to NEPA considers the environmental effects of a specific hydroelectric project. This EA or EIS is included in the record of decision. The comprehensive plans under section 10(a) of the FPA consist of the entire record of the proceeding before the Commission. This record includes all information before the Commission including the EA or EIS, comments by interested parties, studies, as well as any comprehensive plan of a state.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [87] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities. Specifically, if an agency promulgates a final rule under the Administrative Procedure Act (APA), a final RFA analysis must contain (1) a statement of the need for and objectives of the rule, (2) a summary of the issues raised by the public comments in response to any initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected. An agency is not required to make an RFA analysis, however, if it certifies that a rule will not have "a significant economic impact on a substantial number of small entities."

In the NOPR, the Commission certified that these regulations would not have a significant economic impact on a substantial number of small entities. No comments addressed this discussion or the Commission's certification. These rules are procedural in nature and, moreover, insofar as they affect members of the public and impose obligations on them, merely reflect and implement requirements of existing statutes and regulations. Thus, pursuant to section 605(b) of the RFA, the Commission certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act and Effective Date

The Paperwork Reduction Act (PRA) [88] and the Office of Management and Budget's (OMB)[89] regulations require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this final rule have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–5311). Comments on the provisions of this final rule can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This rule will become effective January 19, 1988. However, if OMB has not approved this rule by that date the Commission will issue a notice temporarily suspending the effective date until OMB has approved the requirements.

List of Subjects

18 CFR Part 2

Environmental impact statements, Administrative practice and procedure, Electric power.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 380

Environment, National Environmental Policy Act, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 2, 157 and 380 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Lois D. Cashell,

Acting Secretary.

Appendix A—List of Commenters for RM87–15–000

Note.—This appendix will not be published in the Code of Federal Regulations.

1. Lone Star Gas Company
2. Montana Department of Fish, Wildlife & Parks
3. Pacific Gas and Electric Company
4. Texas Gas Transmission Corporation
5. Pacific Gas Transmission Company
6. Southern California Edison Company
7. Columbia Gas System Service Corporation
8. Izaak Walton League of America Inc.
9. Wisconsin Department of Natural Resources*
10. Independent Petroleum Association of America
11. Council on Environmental Quality
12. Interstate Natural Gas Association of America
13. American Gas Association
14. Edison Electric Institute
15. ANR Pipeline Company and Colorado Interstate Gas Company
16. Tennessee Gas Pipeline Company
17. Panhandle Eastern Pipe Line Company and Trunkline Gas Company
18. Consumers Power Company
19. Natural Resources Defense Council, Inc.
20. Consolidated Gas Transmission Corporation
21. American Rivers Inc., Friends of the Earth, American Whitewater Affiliation, and the Izaak Walton League of America
22. Enron Interstate Pipelines

[87] 5 U.S.C. 601–612 (1982).

[88] 44 U.S.C. 3501–20 (1982).

[89] 5 CFR 1320.12 (1987).

*These comments were filed after the close of the comment period.

23. Texas Eastern Transmission Corporation
24. Friends of the River
25. Environmental Protection Agency
26. California Save Our Streams Council*
27. Transcontinental Gas Pipeline Corporation*
28. Washington Department of Ecology*
29. U.S. Department of the Interior, Office of Environmental Project Review*
30. National Marine Fisheries Service*
31. Planning and Conservation League*

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. In Part 2, the authority citation is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 792–825r (1982); Natural Gas Act, 16 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); National Environmental Policy Act, 16 U.S.C. 4321–4370a (1982).

2. Section 2.80 is revised to read as follows:

§ 2.80 Detailed environmental statement.

(a) It will be the general policy of the Federal Energy Regulatory Commission to adopt and to adhere to the objectives and aims of the National Environmental Policy Act of 1969 (NEPA) in its regulations promulgated for statutes under the jurisdiction of the Commission, including the Federal Power Act, the Natural Gas Act and the Natural Gas Policy Act. The National Environmental Policy Act of 1969 requires, among other things, all Federal agencies to include a detailed environmental statement in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(b) Therefore, in compliance with the National Environmental Policy Act of 1969, the Commission staff will make a detailed environmental statement when the regulatory action taken by the Commission under the statutes under the jurisdiction of the Commission will have a significant environmental impact. The specific regulations implementing NEPA are contained in Part 380 of the Commission's regulations.

§ 2.81 [Removed]

§ 2.82 [Removed]

Appendix A—[Removed]

3. In Part 2, §§ 2.81, 2.82 and Appendix A are removed.

Appendix B—[Redesignated as Appendix A to Part 380]

4. In Part 2, Appendix B is redesignated as Appendix A of Part 380 and its title is revised to read "Appendix A—Guidelines for the Preparation of Environmental Reports for Applications Under the Natural Gas Act, as Specified in § 380.3 of the Commission's Regulations."

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

5. In Part 157, the authority citation is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

6. In § 157.102, paragraph (b)(1)(v) is revised to read as follows:

§ 157.102 Contents of application and other pleadings.

* * * * *

(b) * * *

(1) * * *

(v) An environmental report as specified in Appendix A of Part 380 of this chapter, and

* * * * *

7. In § 157.208, paragraph (c)(11) is revised to read as follows:

§ 157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.

* * * * *

(c) * * *

(11) A concise analysis discussing the relevant issues outlined in Appendix A of Part 380 of this chapter. The analysis must identify the existing environmental conditions and the expected significant impacts that the proposed action, including proposed mitigation measures, will cause to the quality of the human environment, including impact expected to occur to sensitive environmental areas. When compressor facilities are proposed, the analysis must also describe how the proposed action will be made to comply with applicable State Implementation Plans developed under the Clean Air Act. The analysis must also include a description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, National Historic Preservation Act and the Coastal Zone Management Act.

* * * * *

8. A new Part 380 is added to read as follows:

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Sec.

Appendix A—Guidelines for the Preparation of Environmental Reports for Applications Under the Natural Gas Act, as Specified in § 380.3 of the Commission's Regulations

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. No. 12009, 3 CFR 1978 Comp., p. 142.

§ 380.1 Purpose.

The regulations in this part implement the Federal Energy Regulatory Commission's procedures under the National Environmental Policy Act of 1969. These regulations supplement the regulations of the Council on Environmental Quality, 40 CFR Parts 1500 through 1508 (1986). The Commission will comply with the regulations of the Council on Environmental Quality except where those regulations are inconsistent with the statutory requirements of the Commission.

§ 380.2 Definitions and terminology.

For purposes of this part—

(a) "Categorical exclusion" means a category of actions described in § 380.4, which do not individually or cumulatively have a significant effect on the human environment and which the Commission has found to have no such effect and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. The Commission may decide

to prepare environmental assessments for the reasons stated in § 380.4(b).

(b) "Commission" means the Federal Energy Regulatory Commission.

(c) "Council" means the Council on Environmental Quality.

(d) "Environmental assessment" means a concise public document for which the Commission is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid the Commission's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary. Environmental assessments must include brief discussions of the need for the proposal, of alternatives as required by section 102(2)(E) of NEPA, of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

(e) "Environmental impact statement" (EIS) means a detailed written statement as required by section 102(2)(C) of NEPA. DEIS means a draft EIS and FEIS means a final EIS.

(f) "Environmental report" or ER means that part of an application submitted to the Commission by an applicant for authorization of a proposed action which includes information concerning the environment, the applicant's analysis of the environmental impact of the action, or alternatives to the action required by this or other applicable statutes or regulations.

(g) "Finding of no significant impact" (FONSI) means a document by the Commission briefly presenting the reason why an action, not otherwise excluded by § 380.4, will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It must include the environmental assessment or a summary of it and must note other environmental documents related to it. If the assessment is included, the FONSI need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 380.3 Environmental information to be supplied by an applicant.

(a) An applicant must submit information as follows:

(1) For any proposed action identified in §§ 380.5 and 380.6, and environmental report with the proposal as prescribed in paragraph (c) of this section.

(2) For any proposal not identified in paragraph (a)(1) of this section, any environmental information that the Commission may determine is necessary for compliance with these regulations, the regulations of the Council, NEPA and other Federal laws such as the Endangered Species Act, the National Historic Preservation Act or the Coastal Zone Management Act.

(b) An applicant must also:

(1) Provide all necessary or relevant information to the Commission;

(2) Conduct any studies that the Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources;

(3) Consult with appropriate Federal, regional, State, and local agencies during the planning stages of the proposed action to ensure that all potential environmental impacts are identified. (The specific requirements for consultation on hydropower projects are contained in § 4.38 of this chapter and in section 4(a) of the Electric Consumers Protection Act, Pub. L. No. 99-495, 100 Stat. 1243, 1246 (1986));

(4) Submit applications for all Federal and State approvals as early as possible in the planning process; and

(5) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

(c) *Content of an applicant's environmental report for specific proposals*—(1) *Hydropower projects.* The information required for specific project applications under Part 4 of this chapter.

(2) *Natural gas projects.* (i) For any application filed under the Natural Gas Act for any proposed action identified in §§ 380.5 or 380.6, except for prior notice filings under § 157.208, as described in § 380.5(b), the information identified in Appendix A of this part.

(ii) For prior notice filings under § 157.208, the report described by § 157.208(c)(11) of this chapter.

§ 380.4 Projects or actions categorically excluded.

(a) *General rule.* Except as stated in paragraph (b) of this section, neither an environmental assessment nor an environmental impact statement will be prepared for the following projects or actions:

(1) Procedural, ministerial, or internal administrative and management actions, programs, or decisions, including procurement, contracting, personnel actions, correction or clarification of filings or orders, and acceptance, rejection and dismissal of filings;

(2)(i) Reports or recommendations on legislation not initiated by the Commission, and

(ii) Proposals for legislation and promulgation of rules that are clarifying, corrective, or procedural, or that do not substantially change the effect of legislation or regulations being amended;

(3) Compliance and review actions, including investigations (jurisdictional or otherwise), conferences, hearings, notices of probable violation, show cause orders, and adjustments under section 502(c) of the Natural Gas Policy Act of 1978 (NGPA);

(4) Review of grants or denials by the Department of Energy (DOE) of any adjustment request, and review of contested remedial orders issued by DOE;

(5) Information gathering, analysis, and dissemination;

(6) Conceptual or feasibility studies;

(7) Actions concerning the reservation and classification of United States lands as water power sites and other actions under section 24 of the Federal Power Act;

(8) Transfers of water power project licenses and transfers of exemptions under Part I of the Federal Power Act and Part 9 of this chapter;

(9) Issuance of preliminary permits for water power projects under Part I of the Federal Power Act and Part 4 of this chapter;

(10) Withdrawals of applications for certificates under the Natural Gas Act, or for water power project preliminary permits, exemptions, or licenses under Part I of the Federal Power Act and Part 4 of this chapter;

(11) Actions concerning annual charges or headwater benefits, charges for water power projects under Parts 11 and 13 of this chapter and establishment of fees to be paid by an applicant for a license or exemption required to meet the terms and conditions of section 30(c) of the Federal Power Act;

(12) Approval for water power projects under Part I of the Federal Power Act, of "as built" or revised drawings or exhibits that propose no changes to project works or operations or that reflect changes that have previously been approved or required by the Commission;

(13) Surrender and amendment of preliminary permits, and surrender of water power licenses and exemptions where no project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that do not require ground disturbing activity or changes to project works or operation;

(14) Exemptions for small conduit hydroelectric facilities as defined in § 4.30(b)(26) of this chapter under Part I of the Federal Power Act and Part 4 of this chapter;

(15) Electric rate filings submitted by public utilities, establishment of just and reasonable rates, and confirmation, approval, and disapproval of rate filings submitted by Federal power marketing agencies under sections 205 and 206 of the Federal Power Act;

(16) Approval of actions under sections 4(b), 203, 204, 301, 304, and 305 of the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, merger, interlocking directorates, jurisdictional determinations and accounting orders;

(17) Approval of electrical interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, that would not entail:

(i) Construction of a new substation or expansion of the boundaries of an existing substation;

(ii) Construction of any transmission line that operates at more than 115 kilovolts (KV) and occupies more than ten miles of an existing right-of-way; or

(iii) Construction of any transmission line more than one mile long if located on a new right-of-way;

(18) Approval of changes in land rights for water power projects under Part I of the Federal Power Act and Part 4 of this chapter, if no construction or change in land use is either proposed or known by the Commission to be contemplated for the land affected;

(19) Approval of proposals under Part I of the Federal Power Act and Part 4 of this chapter to authorize use of water power project lands or waters for gas or electric utility distribution lines, radial (sub-transmission) lines, communications lines and cables, storm drains, sewer lines not discharging into project waters, water mains, piers, landings, boat docks, or similar structures and facilities, landscaping or embankments, bulkheads, retaining walls, or similar shoreline erosion control structures;

(20) Action on applications for exemption under section 1(c) of the Natural Gas Act;

(21) Approvals of blanket certificate applications and prior notice filings under § 157.204 and §§ 157.209 through 157.218 of this chapter;

(22) Approvals of blanket certificate applications under §§ 284.221 through 284.224 of this chapter;

(23) Producers' applications for the sale of gas filed under §§ 157.23 through 157.29 of this chapter;

(24) Approval under section 7 of the Natural Gas Act of taps, meters, and regulating facilities located completely within an existing natural gas pipeline right-of-way or compressor station if company records show the land use of the vicinity has not changed since the original facilities were installed, and no significant nonjurisdictional facilities would be constructed in association with construction of the interconnection facilities;

(25) Review of natural gas rate filings, including any curtailment plans other than those specified in § 380.5(b)(5), and establishment of rates for transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act and sections 311 and 401 through 404 of the Natural Gas Policy Act of 1978;

(26) Review of approval of oil pipeline rate filings under Parts 340 and 341 of this chapter;

(27) Sale, exchange, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas Act that requires no construction of facilities;

(28) Abandonment in place of a minor natural gas pipeline (short segments of buried pipe of 6-inch inside diameter or less), or abandonment by removal of minor surface facilities such as metering stations, valves, and tops under section 7 of the Natural Gas Act so long as appropriate erosion control and site restoration takes place;

(29) Abandonment of service under any gas supply contract pursuant to section 7 of the Natural Gas Act;

(30) Approval of filing made in compliance with the requirements of a certificate for a natural gas project under section 7 of the Natural Gas Act or a preliminary permit, exemption, license, or license amendment order for a water power project under Part I of the Federal Power Act;

(b) *Exceptions to categorical exclusions.* (1) In accordance with 40 CFR 1508.4, the Commission and its staff will independently evaluate environmental information supplied in an application and in comments by the public. Where circumstances indicate that an action may be a major Federal action signficantly affecting the quality of the human environment, the Commission:

(i) May require an environmental report or other additional environmental information, and

(ii) Will prepare an environmental assessment or an environmental impact statement.

(2) Such circumstances may exist when the action may have an effect on one of the following:

(i) Indian lands;

(ii) Wilderness areas;

(iii) Wild and scenic rivers;

(iv) Wetlands;

(v) Units of the National Park System, National Refuges, or National Fish Hatcheries;

(vi) Anadromous fish or endangered species; or

(vii) Where the environmental effects are uncertain.

However, the existence of one or more of the above will not automatically require the submission of an environmental report or the preparation of an environmental assessment or an environmental impact statement.

§ 380.5 Actions that require an environmental assessment.

(1) An environmental assessment will normally be prepared first for the actions identified in this section. Depending on the outcome of the environmental assessment, the Commission may or may not prepare an environmental impact statement. However, depending on the location or scope of the proposed action, or the resources affected, the Commission may in specific circumstances proceed directly to prepare an environmental impact statement.

(b) The projects subject to an environmental assessment are as follows:

(1) Except as identified in §§ 380.4, 380.6 and 2.55 of this chapter, authorization under section 7 of the Natural Gas Act for the construction, replacement, or abandonment of compression, processing, or interconnecting facilities, onshore and offshore pipleines, metering facilities, LNG peak-shaving facilities, or other facilities necessary for the sale, exchange, storage, or transportation of natural gas;

(2) Prior notice filings under § 157.208 of this chapter for the rearrangement of any facility specified in §§ 157.202 (b)(3) and (6) of this chapter or the acquisition, construction, or operation of any eligible facility as specified in §§ 157.202 (b)(2) and (3) of this chapter;

(3) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act unless excluded under §§ 380.4 (a)(21), (28) or (29);

(4) Except as identified in § 380.6, conversion of existing depleted oil or natural gas fields to underground storage fields under section 7 of the Natural Gas Act.

(5) New natural gas curtailment plans, or any amendment to an existing curtailment plan under section 4 of the Natural Gas Act and sections 401 through 404 of the Natural Gas Policy

Act of 1978 that has a major effect on an entire pipeline system;

(6) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any water power project—existing dam;

(7) Exemptions under section 405 of the Public Utility Regulatory Policies Act of 1978, as amended, and §§ 4.30(b)(27) and 4.101–4.106 of this chapter for small hydroelectric power projects of 5 MW or less;

(8) Licenses for additional project works at licensed projects under Part I of the Federal Power Act whether or not these are styled license amendments or original licenses;

(9) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for transmission lines only;

(10) Applications for new licenses under section 15 of the Federal Power Act;

(11) Approval of electric interconnections and wheeling under sections 202(b), 210, 211, and 212 of the Federal Power Act, unless excluded under § 380.4(a)(17); and

(12) Regulations or proposals for legislation not excluded under § 380.4(a)(2).

(13) Surrender of water power licenses and exemptions where project works exist or ground disturbing activity has occurred and amendments to water power licenses and exemptions that require ground disturbing activity or changes to project works or operations.

§ 380.6 Actions that require an environmental impact statement.

(a) Except as provided in paragraph (b) of this section, an environmental impact statement will normally be prepared first for the following projects:

(1) Authorization under section 3 or 7 of the Natural Gas Act for construction and operation of jurisdictional liquefied natural gas import/export facilities used wholly or in part to liquefy, store, or regasify liquefied natural gas transported by water;

(2) Certificate applications under section 7 of the Natural Gas Act to develop an underground natural gas storage facility except where depleted oil or natural gas producing fields are used;

(3) Major pipeline construction projects under section 7 of the Natural Gas Act using right-of-way in which there is no existing natural gas pipeline; and

(4) Licenses under Part I of the Federal Power Act and Part 4 of this chapter for construction of any unconstructed water power project.

(b) If the Commission believes that a proposed action identified in paragraph (a) of this section may not be a major Federal action significantly affecting the quality of the human environment, an environmental assessment, rather than an environmental impact statement, will be prepared first. Depending on the outcome of the environmental assessment, an environmental impact statement may or may not be prepared.

(c) An environmental impact statement will not be required if an environmental assessment indicates that a proposal has adverse environmental affects and the proposal is not approved.

§ 380.7 Format of an environmental impact statement.

In addition to the requirements for an environmental impact statement prescribed in 40 CFR 1502.10 of the regulations of the Council, an environmental impact statement prepared by the Commission will include a section on the literature cited in the environmental impact statement and a staff conclusion section. The staff conclusion section will include summaries of:

(a) The significant environmental impacts of the proposed action;

(b) Any alternative to the proposed action that would have a less severe environmental impact or impacts and the action preferred by the staff;

(c) Any mitigation measures proposed by the applicant, as well as additional mitigation measures that might be more effective;

(d) Any significant environmental impacts of the proposed action that cannot be mitigated; and

(e) References to any pending, completed, or recommended studies that might provide baseline data or additional data on the proposed action.

§ 380.8 Preparation of environmental documents.

The preparation of environmental documents, as defined in § 1508.10 of the regulations of the Council, on hydroelectric projects, is the responsibility of the Commission's Office of Hydropower Licensing, 400 First Street NW., Washington, DC 20426, (202) 376–9171. The preparation of environmental documents on natural gas projects is the responsibility of the Commission's Office of Pipeline and Producer Regulation, (202) 357–8500, 825 North Capitol Street NW., Washington, DC 20426. Persons interested in status reports or information on environmental impact statements or other elements of the NEPA process, including the studies or other information the Commission may require on these projects, can contact these sections.

§ 380.9 Public availability of NEPA documents and public notice of NEPA related hearings and public meetings.

(a)(1) The Commission will comply with the requirements of 40 CFR 1506.6 of the regulations of the Council for public involvement in NEPA.

(2) If an action has effects of primarily local concern, the Commission may give additional notice in a Commission order.

(b) The Commission will make environmental impact statements, environmental assessments, the comments received, and any underlaying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552 (1982)). The exclusion in the Freedom of Information Act for interagency memoranda is not applicable where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Such materials will be made available to the public at the Commission's Public Reference Room at 825 North Capitol Street NW., Room 1000, Washington, DC 20426 at a fee and in the manner described in Part 388 of this chapter. A copy of an environmental impact statement or environmental assessment for hydroelectric projects may also be made available for inspection at the Commission's regional office for the region where the proposed action is located.

§ 380.10 Participation in Commission proceedings.

(a) *Intervention proceedings involving a party or parties*—(1) *Motion to intervene.* (i) In addition to submitting comments on the NEPA process and NEPA related documents, any person may file a motion to intervene in a Commission proceeding dealing with environmental issues under the terms of § 385.214 of this chapter. Any person who files a motion to intervene on the basis of a draft environmental impact statement will be deemed to have filed a timely motion, in accordance with § 385.214, as long as the motion is filed within the comment period for the draft environmental impact statement.

(ii) Any person that is granted intervention after petitioning becomes a party to the proceeding and accepts the record as developed by the parties as of the time that intervention is granted.

(2)(i) *Issues not set for trial-type hearing.* An intervenor who takes a position on any environmental issue that has not yet been set for hearing must file a timely motion with the Secretary containing an analysis of its position on such issue and specifying any

differences with the position of Commission staff or an applicant upon which the intervenor wishes to be heard at a hearing.

(ii) *Issues set for trial-type hearing.* (A) Any intervenor that takes a position on an environmental issue set for hearing may offer evidence for the record in support of such position and otherwise participate in accordance with the Commission's Rules of Practice and Procedure. Any intervenor must specify any differences from the staff's and the applicant's positions.

(B) To be considered, any facts or opinions on an environmental issue set for hearing must be admitted into evidence and made part of the record of the proceeding.

(b) *Rulemaking proceedings.* Any person may file comments on any environmental issue in a rulemaking proceeding.

§ 380.11 Environmental decisionmaking.

(a) *Decision points.* For the actions which require an environmental assessment or environmental impact statement, environmental considerations will be addressed at appropriate major decision points.

(1) In proceedings involving a party or parties and not set for trial-type hearing, major decision points are the approval or denial of proposals by the Commission or its designees.

(2) In matters set for trial-type hearing, the major decision points are the initial decision of an administrative law judge or the decision of the Commission.

(3) In a rulemaking proceeding, the major decision points are the Notice of Proposed Rulemaking and the Final Rule.

(b) *Environmental documents as part of the record.* The Commission will include environmental assessments, findings of no significant impact, or environmental impact statements, and any supplements in the record of the proceeding.

(c) *Application denials.* Notwithstanding any provision in this Part, the Commission may dismiss or deny an application without performing an environmental impact statement or without undertaking environmental analysis.

9. In newly redesignated Appendix A of Part 380, guidelines (2), (3), and (8) are revised to read as follows:

Appendix A—Guidelines for the Preparation of Environmental Reports for Applications Under the Natural Gas Act, as Specified in § 380.3 of the Commission's Regulations.

* * * * *

(2) Pertain to actions under Part 380, Chapter I, Title 18, Code of Federal Regulations;

(3) Provide the basis for the preparation of environmental reports being prepared pursuant to Part 380 by applicants for the construction of pipeline facilities under the jurisdiction of the Commission; and

* * * * *

(8) These guidelines have been prepared to relate to a wide range of possible actions that could come before the Commission for consideration. The applicant is expected to make the detail of the environmental report commensurate with the complexity of the possible environmental impact of the proposed action. It is important to recognize that there is some duplication in the information requested. Often a section asks for an evaluation from a different viewpoint rather than absolutely new information. Upon review of the applicant's environmental report, staff may request additional informaiton.

[FR Doc. 28894 Filed 12-16-87; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Parts 2 and 284

[Docket No. RM87-34-053]

Natural Gas Pipelines After Partial Wellhead Decontrol; Rehearing

Issued: December 14, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule; Order granting rehearing solely for purposes of further consideration.

SUMMARY: The Federal Energy Regulatory Commission is granting rehearing of Order No. 500-B and the Order Explaining Crediting Provisions of Order No. 500 solely for the purpose of affording sufficient time to consider the numerous issues raised in the requests for rehearing of those orders. This action does not constitute a grant or denial of rehearing, either in whole or in part.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8274.

SUPPLEMENTARY INFORMATION:

Order Granting Rehearing Solely for Purposes of Further Consideration

Before Commissioners: Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

On October 16, 1987, the Commission issued Order No. 500-B [1] denying rehearing in part, granting rehearing in part, and modifying Order No. 500.[2] On the same day, the Commission also issued an order explaining the take-or-pay crediting provisions of Order No. 500.[3] On November 12, 13 and 16, the Commission received eleven requests for rehearing of those orders.

In order to afford sufficient time to consider the issues raised in the rehearing requests, it is necessary to grant rehearing of Order No. 500-B and the explanatory order for the limited purpose of further consideration.

The Commission orders: Rehearing of Order No. 500-B and the Order Explaining Crediting Provisions of Order No. 500 is hereby granted for the limited purpose of further consideration. This action does not constitute a grant or denial of rehearing, either in whole or in part. As provided in § 385.713(d) of the Commission's Rules of Practice and Procedure, no answers to the requests for rehearing will be entertained by the Commission.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29016 Filed 12-16-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

Federal Old-Age, Survivors and Disability Insurance; Effect of Pension From Noncovered Employment

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: In these regulations, we explain the modified methods of computing the primary insurance amount of a worker who is first eligible after 1985 for both Social Security old-age or disability insurance benefits and a pension based on his or her noncovered work. Section 113 of Pub. L. 98-21 (the Social Security Amendments of 1983) is intended to eliminate the windfall in Social Security benefits that goes to workers who spent many years in work not covered by Social Security but only a few years in covered work.

[1] 52 FR 39630 (Oct. 23, 1987).

[2] 52 FR 30334 (Aug. 14, 1987).

[3] 41 FERC ¶ 61,025 (1987).

DATES: These rules are effective December 17, 1987. The statutory provisions which they implement are effective for workers who first become eligible after 1985 for old-age or disability insurance benefits and a pension from noncovered employment. Section 404.213(f) is added to this final rule to explain how we determine your total years of coverage for purposes of applying the modified computation in § 404.213(d) or the exception in § 404.213(e) if you receive a totalization benefit and a pension based on noncovered employment. We believe the addition of this section now clearly explains how we compute the benefit amount in these cases. We are accepting public comment for § 404.213(f) and will consider comments concerning this section that we receive on or before February 16, 1988. We will revise rules in the section if public comments warrant.

ADDRESSES: Send your written comments to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, MD 21203, or deliver to the Office of Regulations, Social Security Administration, 3–B–4, Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 between 8:00 a.m. and 4:30 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Duane Heaton, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6629.

SUPPLEMENTARY INFORMATION: The formulas used to compute primary insurance amounts (i.e., the basic amount from which a worker's monthly benefits are calculated) are weighted in favor of workers who had low earnings, presumably over many years of work in covered employment. For example, the formula now used most often takes 90 percent of a worker's average indexed monthly earnings up to a prescribed amount ($297 for workers newly eligible in 1986) in the first of 3 earnings brackets and much smaller precentages (32 percent and 15 percent) in the other 2 earnings brackets.

This weighting is advantageous for workers who have earned relatively low wages throughout their careers and for workers, such as the periodically unemployed, who have gaps in their earnings histories. However, for a worker who has only minimal coverage, but has spent most of his or her working career in noncovered work for which he or she receives a pension, weighting results in a windfall of Social Security benefits which Congress did no intend. That is, the worker with a low earnings history but not pension from noncovered work receives a relatively high replacement of former earnings when compared to the worker with a history of high covered earnings. This is what Congress intended. But where a worker with low earnings because of minimal covered employment also receives a pension from noncovered employment, the result is the unintended windfall of Social Security benefits.

Before the Social Security Amendments of 1983, we computed a worker's primary insurance amount based on his or her earnings in employment covered by Social Security, without regard to any pension based on noncovered employment to which the worker might be entitled. (However, the 1977 Amendments introduced a provision in section 334 of Pub. L. 95–216 whereby the benefits payable to the spouse or surviving spouse of a worker reduced if the spouse or surviving spouse is eligible for a Government pension based on his or her own noncovered employment by a Federal, State, or local government agency in the United States. (See 20 CFR 404.408a.)) Under the provisions of section 113 of Pub. L. 98–21, the primary insurance amount of a worker who is also entitled to a pension based on noncovered employment will, in most cases, be less than it would have been without this provision of the amendments.

We explain in these regulations that if a worker first becomes eligible after 1985 for both old-age or disability insurance benefits and a pension based on noncovered employment, we will use modified benefit formulas and consider the amount of his or her monthly pension when we compute the primary insurance amount for months that he or she is concurrently entitled to Social Security benefits and to a monthly pension. We also explain how we determine the amount of the monthly pension we will use when this amount affects the computation of the primary insurance amount.

Further, we explain how the two computation methods—the average-indexed-monthly-earnings method and the 1977 simplified old-start method—in use for workers who become eligible after 1985 will be modified because of the worker's eligibility for a monthly pension. We explain how we will recompute the primary insurance amount if a worker who first becomes eligible for Social Security benefits after 1985 later becomes entitled to a pension based on noncovered employment. Lastly, we explain how we will recompute because of additional earnings if the initial computation was affected by entitlement to a pension.

Certain workers who are entitled to monthly pensions based on noncovered employment are excluded by law from this modified computation. Workers excluded are those Federal employees and certain employees of nonprofit organizations who became covered under Social Security in 1984, railroad employees, and workers who have 30 years of Social Security coverage as defined for the purpose of computing the special minimum primary insurance amount (§§ 404.260 through 404.261).

Comments

These rules were published as a Notice of Proposed Rulemaking (NPRM) at 50 FR 49558 on December 3, 1985. We received comments from several people. Some commenters are displeased that the rules will result in lower Social Security benefits for them. As we have stated, these rules explain a provision of the Social Security Act which we are required to implement.

One commenter, a Federal employee, is concerned that her benefits will be reduced by 50 percent because of these rules. Again, we are required by law to implement this provision as provided by Congress.

Another commenter urged that we modify our rules to provide that military retirement pay of members of the Reserves and inactive duty pay be deemed covered employment for purposes of these rules. Such deeming is contrary to the provisions of sections 209 (third paragraph after subsection(s)) and 210(1) of the Social Security Act, and 20 CFR 404.1019 and 1059(c).

One commenter agrees with the rules, but suggests that we eliminate from our benefit computations any years of zero earnings after age 55. The commenter feels that this would eliminate the penalty for workers whose employer permits them to retire at age 55. However, section 215 of the Social Security Act and Subpart C of 20 CFR require that our computations be based on the worker's earnings at least up to the year he or she becomes eligible for benefits, minus no more than 5 years of low or no earnings. Therefore, we cannot routinely eliminate all years of zero earnings after age 55.

Finally, one commenter suggested several changes to clarify the language in the proposed rules. We have adopted these changes, the most notable of which is the addition of a sentence to the parenthetical in § 404.213(a)(3) to explain the effect of pensions from noncovered employment outside the United States.

Adoption of Proposed Rules

As indicated above, we made changes in response to the comments and are adopting these rules as proposed, except as otherwise stated.

Paragraphs (a) and (b) of § 404.243 are amended by adding the provision that excludes cost of living amounts in computing the primary insurance amount when you are eligible for a pension based on noncovered employment. This provision is contained in the statute (Pub. L. 98–21) but was omitted in the Notice of Proposed Rulemaking published at 50 FR 49558 on December 3, 1985. Since this provision is part of the statute and is nondiscretionary, we are including the provision in the final regulation without benefit of public comment.

Since the NPRM was published, the Federal Employees Retirement Act of 1986, Pub. L. 99–335 was enacted. Under section 304 thereof, a Federal employee covered by the Civil Service Retirement System (CSRS) can choose an "alternative form of annuity." An employee choosing this form of annuity may at the time of retirement withdraw in a lump sum the amount of contributions he or she paid into the CSRS. The individuals who so withdraw their contributions still receive a monthly CSRS annuity, but reduced appropriately to reflect the withdrawal. Accordingly, we have deleted the parenthetical sentence, "a withdrawal of contributions is not considered a lump-sum payment" from § 404.213(b)(1) to prevent misleading Federal employees who choose the "alternative form of annuity" under the CSRS into believing that the contributions they withdraw will not be used in computing the amount of the pension they receive based on noncovered employment.

Secion 404.213(f) is added to this final rule to explain how we take into account your foreign work, covered by a totalization agreement, when we compute your years of coverage for purposes of determining whether you are excluded altogether from the modified computation or are subject to the alternative formula of § 404.213(d). A partial explanation of this point in paragraph (d) in the Notice of Proposed Rulemaking is omitted from the final regulation.

Since we did not afford the public an opportunity to comment on this section when the NPRM was published, we are accepting public comments for a 60 day period. If public comments warrant, we will revise the rules in this section.

Regulatory Procedures

Executive Order 12291

The Secretary, in consultation with the Office of Management and Budget, has determined that this rule is not a major rule under the terms of Executive Order 12291, therefore, a regulatory impact analysis is not required. In addition, the Secretary has determined that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only benefit amounts payable to individuals. Therefore, a regulatory flexibility analysis as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

Although these rules do not contain a new reporting requirement, we expect to ask 90,000 individuals annually to furnish information regarding their receipt of a pension from noncovered employment. We will collect this information on a Form SSA–150, Modified Benefit Formula Questionnaire (OMB No. 0960–0395). This form was approved by the Office of Management and Budget for use under section 3507, Pub. L. 96–511, the Paperwork Reduction Act of 1980.

(Catalog of Federal Domestic Assistance Programs Nos. 13.802 Social Security—Disability Insurance, 13.803 Social Security—Retirement Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedures, Death benefits, Disability benefits, Old-Age, Survivors, and Disability Insurance.

Dated: July 8, 1987.

Dorcas R. Hardy,

Commissioner of Social Security.

Approved: August 21, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

Subpart C of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.212 is amended by adding a new paragraph (b)(4) to read as follows:

§ 404.212 Computing your primary insurance amount from your average indexed monthly earnings.

* * * * *

(b) * * *

(4) We may use a modified formula, as explained in § 404.213, if you are entitled to a pension based on your employment which was not covered by Social Security.

* * * * *

3. A new § 404.213 is added to read as follows:

§ 404.213 Computation where you are eligible for a pension based on your noncovered employment.

(a) *When applicable.* Except as provided in paragraph (d) of this section, we will modify the formula prescribed in § 404.212 and in Appendix II of this Subpart in the following situations:

(1) You become eligible for old-age insurance benefits after 1985; or

(2) You become eligible for disability insurance benefits after 1985; and

(3) For the same months after 1985 that you are entitled to old-age or disability benefits, you are also entitled to a monthly pension(s) for which you first became eligible after 1985 based in whole or part on your earnings in employment which was not covered under Social Security. (Noncovered employment includes employment outside the United States which is not covered under the United States Social Security system. Pensions from noncovered employment outside the United States include both pensions from social insurance systems that base benefits on earnings but not on residence or citizenship, and those from private employers. However, no reduction resulting from entitlement to a pension based on employment covered by a totalization agreement (see §§ 404.1908 and 404.1918) will be made in the computation of a totalized benefit.)

(b) *Amount of your monthly pension that we use.* For purposes of computing your primary insurance amount, we consider the amount of your monthly pension(s) (or the amount prorated on a monthly basis) which is attributable to your noncovered work after 1956 and to which you are entitled (or potentially entitled) for the first month in which you become eligible for Social Security benefits. For this purpose only, we deem you to be entitled to a monthly pension for the first month in which you become eligible for Social Security benefits if

you meet all the requirements for the pension except that you have not applied for it. In determining the amount of your monthly pension we will use, we consider the following:

(1) If your pension is not paid on a monthly basis or is paid in a lump-sum, we will allocate it proportionately as if it were paid monthly. We will allocate this the same way we allocate lump-sum payments for a spouse or surviving spouse whose benefits are reduced because of entitlement to a Government pension. (See § 404.408a.)

(2) If your monthly pension is reduced to provide a survivor's benefit, we will use the unreduced amount.

(3) If you become eligible for a monthly pension after the month in which you became eligible for old-age or disability insurance benefits, we will use the amount of the pension that is payable to you for the first full month you are eligible for it. See § 404.280ff for how we recompute your primary insurance amount because of your later entitlement to a monthly pension.

(4) If the monthly pension amount which we will use in computing your primary insurance amount is not a multiple of $0.10, we will round it to the next lower multiple of $0.10.

(c) *How we compute your primary insurance amount.* When you become entitled to old-age or disability insurance benefits and to a monthly pension, we will compute your primary insurance amount under the average-indexed-monthly-earnings method (§ 404.212) as modified by paragraph (c)(1) and (2) of this section. Where applicable, we will also consider the 1977 simplified old-start method (§ 404.241) as modified by § 404.243 and a special minimum primary insurance amount as explained in §§ 404.260 and 404.261. We will use the highest result from these three methods as your primary insurance amount. We compute under the average-indexed-monthly-earnings method, and use the higher primary insurance amount resulting from the application of paragraphs (c)(1) and (2) of this section, as follows:

(1) The formula in Appendix II, except that instead of the first percentage figure (i.e., 90 percent), we use—

(i) 80 percent if you initially become eligible for old-age or disability insurance benefits in 1986;

(ii) 70 percent for initial eligibility in 1987;

(iii) 60 percent for initial eligibility in 1988;

(iv) 50 percent for initial eligibility in 1989;

(v) 40 percent for initial eligibility in 1990 and later years, or

(2) The formula in Appendix II, minus one-half the portion of your monthly pension which is due to noncovered work after 1956 and for which you were eligible in the first month you became eligible for social security benefits. If the result is not a multiple of $0.10, we will round to the next lower multiple of $0.10. (See paragraph (b)(3) of this section if you are not eligible for a monthly pension in the first month you are eligible for Social Security benefits.) To determine the portion of your pension which is due to noncovered work after 1956, we consider the total number of years of work used to compute your pension and the percentage of those years which are after 1956, and in which your employment was not covered. We take that percentage of your total pension as the amount which is due to your noncovered work after 1956.

(d) *Modified computation.* The computation in paragraph (c) of this section is modified if you have more than 25 but fewer than 30 years of coverage as defined for the purpose of computing the special minimum primary insurance amount (see § 404.261). If you meet this condition, we will use the following percentage instead of the first percentage in Appendix II if the following percentage is larger than the percentage specified in paragraph (c) of this section:

(1) 80 percent if you have 29 years of coverage;

(2) 70 percent if you have 28 years of coverage;

(3) 60 percent if you have 27 years of coverage;

(4) 50 percent if you have 26 years of coverage;

If you later earn an additional year(s) of coverage, we will recompute your primary insurance amount, effective with January of the following year.

(e) *Exceptions.* The computations in paragraph (c) of this section do not apply in the following situations:

(1) You were entitled to benefits under the Railroad Retirement Act. (See Subpart O of this Part for a discussion of railroad retirement benefits.)

(2) You were entitled before 1986 to disability insurance benefits in any of the 12 months before you reach age 62 or again become disabled. (See § 404.251 for the appropriate computation.)

(3) You were a Federal employee newly hired after 1983 who was mandatorily covered. (See Subpart K of this Part for a discussion of coverage of Federal employees.)

(4) You were an employee of a nonprofit organization who was exempt from Social Security coverage on December 31, 1983 unless you were previously covered under a waiver certificate which was terminated prior to that date.

(5) You have 30 years of coverage as defined for the purpose of computing the special minimum primary insurance amount (see § 404.261).

(6) Your survivors are entitled to benefits on your record of earnings. (After your death, we will recompute the primary insurance amount to nullify the effect of any monthly pension, based in whole or in part on noncovered employment, to which you had been entitled.)

(f) *Entitlement to a totalization benefit and a pension based on noncovered employment.* If you are entitled to a totalization benefit and to a pension based on noncovered employment that is not covered by a totalization agreement, we count your coverage from a foreign country with which the United States (U.S.) has a totalization agreement and your U.S. coverage to determine if you meet the requirements for the modified computation in paragraph (d) of this section or the exception in paragraph (e)(5) of this section.

(1) Where the amount of your totalization benefit will be determined using a computation method that does not consider foreign earnings (see § 404.1918), we will find your total years of coverage by adding your—

(i) Years of coverage from the agreement country (quarters of coverage credited under § 404.1908 divided by four) and

(ii) Years of U.S. coverage as defined for the purpose of computing the special minimum primary insurance amount under § 404.261.

(2) Where the amount of your totalization benefit will be determined using a computation method that does consider foreign earnings, we will credit your foreign earnings to your U.S. earnings record and then find your total years of coverage using the method described in § 404.261.

4. Section 404.240 is amended by adding a sentence at the end to read as follows:

§ 404.240 Old-start method—general.

* * * We may use a modified computation, as explained in § 404.243, if you are entitled to a pension based on your employment which was not covered by Social Security.

5. A new § 404.243 is added to read as follows:

§ 404.243 Computation where you are eligible for a pension based on noncovered employment.

The provisions of § 404.213 are applicable to computations under the old-start method, except for paragraphs (c) (1) and (2) and (d) of that section. Your primary insurance amount will be whichever of the following two amounts is larger:

(a) One-half the primary insurance amount computed according to § 404.241 (before application of the cost of living amount); or

(b) The primary insurance amount computed according to § 404.241 (before application of the cost of living amount), minus one-half the portion of your monthly pension which is due to noncovered work after 1956 and for which you were eligible in the first month you became eligible for Social Security benefits. If the result is not a multiple of $0.10, we will round to the next lower multiple of $0.10. (See § 404.213 (b)(3) if you are not eligible for a monthly pension in the first month you are entitled to Social Security benefits.) To determine the portion of your pension which is due to noncovered work after 1956, we consider the total number of years of work used to compute your pension and the percentage of those years which are after 1956 and in which your employment was not covered. We take that percentage of your total pension as the amount which is due to your noncovered work after 1956.

6. Section 404.251 is amended by adding paragraph (c) to read as follows:

§ 404.251 Subsequent entitlement to benefits within 12 months after entitlement to disability benefits ended.

* * * * *

(c) *Disability before 1986; second entitlement after 1985.* When applying the rule in paragraph (b)(3) of this section, we must consider your receipt of a monthly pension based on noncovered employment. (See § 404.213). However, we will disregard your monthly pension if you were previously entitled to disability benefits before 1986 and in any of the 12 months before your second entitlement.

7. Section 404.280 is revised to read as follows:

§ 404.280 Recomputations.

At times after you or your survivors become entitled to benefits, we will recompute your primary insurance amount. Usually we will recompute only if doing so will increase your primary insurance amount. However, we will also recompute your primary insurance amount if you first became eligible for old-age or disability insurance benefits after 1985, and later become entitled to a pension based on your noncovered employment, as explained in § 404.213. There is no limit on the number of times your primary insurance amount may be recomputed, and we do most recomputations automatically. In the following sections, we explain:

(a) Why a recomputation is made (§ 404.281)

(b) When a recomputation takes effect (§ 404.282)

(c) Methods of recomputing (§§ 404.283 and 404.284)

(d) Automatic recomputations (§ 404.285)

(e) Requesting a recomputation (§ 404.286)

(f) Waiving a recomputation (§ 404.287) and

(g) Recomputing when you are entitled to a pension based on noncovered employment (§ 404.288).

8. Section 404.281 is amended by adding paragraph (f) to read as follows:

§ 404.281 Why your primary insurance amount may be recomputed.

* * * * *

(f) *Entitlement to a monthly pension.* We will recompute your primary insurance amount if in a month after you became entitled to old-age or disability insurance benefits, you become entitled to a pension based on noncovered employment, as explained in § 404.213. Further, we will recompute your primary insurance amount after your death to disregard a monthly pension based on noncovered employment which affected your primary insurance amount.

9. Section 404.282 is amended by adding the following sentences after the existing text:

§ 404.282 Effective date of recomputations.

* * * Additionally if you first became eligible for old-age or disability insurance benefits after 1985 and you later also become entitled to a monthly pension based on noncovered employment, we will recompute your primary insurance amount under the rules in § 404.213; this recomputed Social Security benefit amount is effective for the first month you are entitled to the pension. Finally, if your primary insurance amount was affected by your entitlement to a pension, we will recompute the amount to disregard the pension, effective with the month of your death.

10. Section 404.284 is amended in paragraph (a) by adding the following sentence after the existing text:

§ 404.284 Recomputations for people who reach age 62, or become disabled or die before age 62 after 1978.

* * * See § 404.288 for the rules on recomputing when you are entitled to a monthly pension based on noncovered employment.

11. Section 404.288 is added to read as follows:

§ 404.288 Recomputing when you are entitled to a monthly pension based on noncovered employment.

(a) *After entitlement to old-age or disability insurance benefits.* If you first become eligible for old-age or disability insurance benefits after 1985 and you later become entitled to a monthly pension based on noncovered employment, we may recompute your primary insurance amount under the rules in § 404.213. When recomputing, we will use the amount of the pension to which you are entitled or deemed entitled in the first month that you are concurrently eligible for both the pension and old-age or disability insurance benefits. We will disregard the rule in § 404.284(e) that the recomputation must increase your primary insurance amount by at least $1.

(b) *Already entitled to benefits and to a pension based on noncovered employment.* If we have already computed or recomputed your primary insurance amount to take into account your monthly pension, we may later recompute for one of the reasons explained in § 404.281. We will recompute your primary insurance amount under the rules in §§ 404.213 and 404.284. Any increase resulting from the recomputation under the rules of § 404.284 will be added to the most recent primary insurance amount which we had computed to take into account your monthly pension.

(c) *After your death.* If one or more survivors are entitled to benefits after your death, we will recompute the primary insurance amount as though it had never been affected by your entitlement to a monthly pension based in whole or in part on noncovered employment.

[FR Doc. 87-29005 Filed 12-16-87; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

21 CFR Part 184

[Docket No. 84G-0384]

Cocoa Butter Substitute Primarily From Palm Oil

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on substances that are generally recognized as safe (GRAS) to include an alternate method of manufacture for cocoa butter substitute primarily from palm oil. The amendment provides for the safe use of cocoa butter substitute prepared by interesterification of partially saturated 1,2,3-triglycerides (derived from palm oil) and ethyl stearate in the presence of a lipase enzyme preparation. This action responds to a petition filed by Fuji Oil Co., Ltd.

DATES: Effective December 17, 1987. The Director of the Office of the Federal Register approves the incorporation by reference of certain publications in 21 CFR 184.1259 effective on December 17, 1987.

ADDRESS: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John W. Gordon, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION:

Background

Under the procedures described in 21 CFR 170.35, the Fuji Oil Co., Ltd., 6–1, Hachimancho, Minami-Ku, Osaka, Japan, submitted a petition (GRASP 5G0296) requesting that 21 CFR 184.1259 be amended to provide for the use of the cocoa butter substitute, primarily from palm oil, prepared by an alternate method of manufacture. The amendment would provide for the safe use of the ingredient when it is prepared by directed esterification of partially saturated 1,2,3-triglycerides (derived from palm oil) and ethyl stearate in the presence of a lipase enzyme from *Aspergillus niger* (*A. niger*).

FDA published a notice of the filing of this petition in the **Federal Register** of December 28, 1984 (49 FR 50477), and gave interested persons an opportunity to submit comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. FDA did not receive any comments in response to that notice.

The current regulation (§ 184.129) affirms the GRAS status of cocoa butter substitute primarily from palm oil prepared from the directed esterification of fully saturated 1,3-diglycerides (derived from palm oil) with the anhydride of food-grade oleic acid in the presence of the catalyst trifluoromethane sulfonic acid.

Cocoa butter substitute was not used in food prior to 1958, and therefore, it cannot qualify for GRAS status based on a history of common use in food (21 CFR 170.30(c)). However, the ingredient may be GRAS based on scientific procedures. Accordingly, FDA evaluated the cocoa butter substitute described in the subject petition based on this criterion (21 CFR 170.30(b)).

Data

In evaluating this petition, the agency considered three major issues:

1. Chemical composition of the cocoa butter substitute.
2. The safety of the cocoa butter substitute and its minor constituents.
3. The use of the ingredient in food.

Chemical Composition

The cocoa butter substitute primarily from palm oil (cocoa butter substitute) described in the petition is a mixture of triglycerides consisting of 1-palmitoyl-2-oleoyl-3-stearin, 2-oleoyl-1,3-dipalimitin, and 2-oleoyl-1,3-distearin. The constituent in the greatest abundance is 1-palmitoyl-2-oleoyl-3-stearin. Thus, the triglycerides in cocoa butter substitute contain the same fatty acids and the same glycerol components as found in a wide range of fats and oils that are considered GRAS.

The petitioner presented data to show that the chemical composition of the product is similar to natural cocoa butter with respect to fatty acid content and to the distribution of saturated and unsaturated fatty acids in the triglycerides. The only differences between the subject cocoa butter substitute and the cocoa butter substitute affirmed as GRAS in 21 CFR 184.1259 are the residues from the manufacturing process. The cocoa butter substitute described in the petition contains three new, minor constituents: Fatty acid ethyl esters, solvent residues (hexane), and residuals from the lipase enzyme preparation.

Safety

The subject petition relied mainly on the safety data developed to establish the safety of the cocoa butter substitute already regulated under § 184.1259. The petitioner supplemented these data by submitting reports of mutagenic and acute toxicity studies on its product. These reports stated that the material is not mutagenic, and that no compound-related effects were found in the acute toxicity study.

The petition described the source of the lipase enzyme preparation in the proposed method of manufacture of cocoa butter substitute as being from *A. niger* but provided no data on which to base a GRAS affirmation of this use of the enzyme. However, the agency has not always specified in GRAS affirmation regulations the precise enzyme preparations used in the manufacture of the particular GRAS ingredients. For example, in the GRAS affirmation of peptones (see the final rule published in the **Federal Register** of June 21, 1984; 49 FR 25428 and 25429), the agency identified the proteolytic enzymes that could be used to produce peptones as those "that are considered by FDA to be GRAS or that are regulated as food additives." Similarly, for cocoa butter substitutes, the agency concludes that any lipase enzyme preparation that is GRAS or regulated as a food additive for the proposed use can be used in the manufacture of cocoa butter substitute. Therefore, the agency has included this provision in § 184.1259(a), which identifies the ingredient.

The agency's review of the petition also revealed that essentially all of the residues from the enzyme preparation would be removed during processing of the ingredient following the enzyme reaction. Therefore, the agency concludes that specifications limiting residues of the enzyme preparation in the final product are unnecessary except for two minor constituents. The agency concludes that the residual levels of fatty acid ethyl esters (not more than 20 ppm) and of hexane (not more than 5 ppm) in the final product, as specified in the petition, are safe, but that the regulation should include specifications for these residues to assure these low levels (Refs. 1 and 2).

Use in Food

The petition requested that the ingredient be affirmed as GRAS for use in the same food categories as are listed in § 184.1259. Thus, FDA does not believe that granting the petition will lead to expanded use of the ingredient. The petition relies on the chemical similarity between the petitioned ingredient and the cocoa butter substitute affirmed as GRAS in § 184.1259 to assure the functional effect of the ingredient in food. The petition also states that the petitioned ingredient has been used successfully in Japan for the same purposes as the cocoa butter substitute affirmed as GRAS in § 184.1259. The agency believes that the chemical composition data are adequate to assure the functionality of the ingredient in food.

Conclusions

The agency has evaluated the chemical composition data, the safety data, and other information contained in the petition. Based on these data, the agency concludes that cocoa butter substitute produced by this alternate method of manufacture is safe. Cocoa butter substitute is not eligible for GRAS status based on common use in food prior to January 1, 1958. However, information used to establish § 184.1259 and data in the petition showing the similarity between the cocoa butter substitute that is the subject of this petition and the cocoa butter substitute that is affirmed as GRAS in § 184.1259 are adequate to establish GRAS status for this ingredient based on scientific procedures.

This conclusion is based on the following:

1. Cocoa butter substitute currently listed in § 184.1259 is GRAS.

2. The composition of cocoa butter substitute prepared by the petitioned method is similar to the composition of cocoa butter substitute listed in § 184.1259.

3. Specifications contained in the petition are adequate to limit residual levels of fatty acid ethyl esters and hexane that result from the petitioned method of manufacture.

4. A lipase enzyme preparation that is GRAS or that is a regulated food additive is safe for use in the manufacture of cocoa butter substitute.

5. Cocoa butter substitute prepared by the petitioned method achieves its intended technical effect in food.

6. The change in the regulation is not expected to increase consumption of cocoa butter substitute.

Therefore, the agency is amending § 184.1259 to provide for this alternate method for manufacturing cocoa butter substitute primarily from palm oil.

The agency is aware that the filing notice described the reaction of partially saturated 1,2,3-triglycerides derived from palm oil and ethyl stearate catalyzed by a lipase enzyme preparation as a directed esterification reaction. However, the petition also referred to the reaction as an interesterification reaction. The agency finds that both of the descriptions are correct but concludes that the term "interesterification" is more descriptive of the reaction. Therefore, the agency has adopted the term "interesterification" in the regulation to describe the reaction.

In accordance with § 170.35(c)(2) (21 CFR 170.35(c)(2)) the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Dockets Management Branch (address above).

Environmental Effects

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Economic Effects

In accordance with the Regulatory Flexibility Act, the agency has considered the potential effects that this rule would have on small entities, including small businesses, and has determined that the effect of this final rule is to maintain the approved uses of cocoa butter substitute primarily from palm oil. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action.

In accordance with Executive Order 12291, FDA has carefully analyzed the potential economic effects of this final rule as defined by the Order. The agency has determined that the rule is not a major rule and that it will have no significant impact on small businesses. A copy of the threshold assessment supporting this determination is on file with the Docket Management Branch.

References

The following information has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons in that office between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum of November 30, 1984, from John Modderman to John W. Gordon.

2. Memorandum of January 17, 1985, from Sara H. Henry to John W. Gordon.

List of Subjects in 21 CFR Part 184

Food ingredients, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Part 184 is amended as follows:

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371), 21 CFR 5.10, 5.61.

2. Section 184.1259 is amended by revising paragraph (a) and by adding paragraphs (b)(8) and (9) to read as follows:

§ 184.1259 Cocoa butter substitute primarily from palm oil.

(a) The common or usual name for the triglyceride 1-palmitoyl-2-oleoyl-3-stearin is "cocoa butter substitute primarily from palm oil." The ingredient is manufactured by—

(1) Directed esterification of fully saturated 1,3-diglycerides (derived from palm oil) with the anhydride of food-grade oleic acid in the presence of the catalyst trifluoromethane sulfonic acid (§ 173.395 of this chapter), or

(2) By interesterification of partially saturated 1,2,3-triglycerides (derived from palm oil) with ethyl stearate in the presence of a suitable lipase enzyme preparation that is either GRAS or has food additive approved for such use.

(b) * * *

(8) Residual fatty acid ethyl esters—not more than 20 parts per million as determined by a "Modification of Japan Institute of Oils and Fats: Analysis Method of Residual Ethyl Esters of Fatty Acids" issued by the Fuji Oil Co., which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

(9) Hexane—not more than 5 parts per million as determined by the method of Dupuy et al., "Rapid Quantitative Determination of Residual Hexane in Oils by Direct Gas Chromatography," published in the "Journal of the American Oil Chemists' Society," Vol. 52, p. 118–120, 1975, which is incorporated by reference. Copies are available from the Division of Food and Color Additives, Center for Food Safety and Applied Nutrition (HFF–330), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or available for inspection at the Office of the Federal

Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Dated: December 7, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-28959 Filed 12-16-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Costs Associated With Disclosure

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The United States Parole Commission is making a procedural revision to its rule at 28 CFR 2.56(f) (Disclosure of Parole Commission Regional Office File) to conform with the particular Department of Justice regulation referenced therein.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: The U.S. Parole Commission is making a procedural change to one of its rules related to the disclosure of materials by the Commission.

28 CFR 2.56(f) contains the rules related to reproduction (photocopying) costs associated with the disclosure to prisoners and parolees of records contained in regional office files. Within that subsection is a parenthetical reference to a fee schedule set forth in the Department of Justice Regulations at 28 CFR 16.10.

The Department of Justice's regulation implementing the new fee provisions of the Freedom of Information Reform Act of 1986, Pub. L. 99-570, has now been issued in final form. This regulation became effective October 2, 1987. In order to implement the Department's regulation, minor changes need to be made to the text of 28 CFR 2.56(f) to conform that section to the new regulation.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.56(f) is revised to read as follows:

§ 2.56 Disclosure of Parole Commission Regional Office File.

* * * * *

(f) *Costs.* In any case in which billable costs exceed $8.00 (based upon the provisions and fee schedules as set forth in the Department of Justice regulation 28 CFR 16.10), requesters will be notified that they will be required to reimburse the United States for such costs before copies are released.

* * * * *

Dated: December 4, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-28961 Filed 12-16-87; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Instructions to Salient Factor Scoring Manual

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making an addition to the instructions that accompany its Salient Factor Scoring Manual in its paroling policy guidelines contained in 28 CFR 2.20. This change is intended to make the manual and guidelines more comprehensive.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: As part of the paroling policy guidelines contained in 28 CFR 2.20, the Commission has developed various instructions as a guide in computing the salient factor score. Those instructions are included in a Salient Factor Score Manual that is part of the guidelines and that is keyed to the items in the Salient Factor Score. Item A deals with prior convictions and prior adjudications and provides instructions for scoring various kinds and types of prior convictions.

The term "adjudication withheld" is used by Florida courts to identify case dispositions in which a formal conviction is not entered at the time of sentencing. The withholding enables the defendant to retain his civil rights and not to be classified as a convicted felon. Although adjudication of guilt is withheld, the withholding is preceded by a finding of guilt made after a plea or trial. Thus, since the disposition "adjudication withheld" is characterized by an admission of guilt and/or a finding of guilt before a judicial body, dispositions of "adjudication withheld" should be counted as convictions by the Commission for salient factor scoring purposes. However, "adjudication withheld" should not be considered a conviction on which a forfeiture of street time can be based.

To clarify this conclusion and to avoid potential inconsistencies, the Commission is amending the Salient Factor Scoring Manual by adding a new instruction specifically addressing these Florida cases.

This rule change will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Lists of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 continues to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. The instructions that accompany the Salient Factor Scoring Manual of 28 CFR 2.20 are amended by adding a new instruction, A.13, to read as follows:

* * * * *

A.13 Adjudication Withheld (Florida). In Florida, the term "adjudication withheld" refers to a disposition in which a formal conviction is not entered at the time of sentencing, the purpose of which is to allow the defendant to retain his civil rights and not to be classified as a convicted felon. Since the disposition of adjudication withheld is characterized by an admission of guilt and/or a finding of guilt before a judicial body, dispositions of "adjudication withheld" are to be counted as convictions for salient factor scoring purposes. However, it is not considered a conviction on which forfeiture of street time can be based.

* * * * *

Dated: December 4, 1987.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 87-28960 Filed 12-16-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; U.S.S. LAKE CHAMPLAIN

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that U.S.S. LAKE CHAMPLAIN (CG-57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 2, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400; Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that U.S.S. LAKE CHAMPLAIN (CG-57) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Under Secretary of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	Aft masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained
U.S.S. LAKE CHAMPLAIN	CG-57						X	X	38

Date: December 2, 1987.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 87-28950 Filed 12-16-87; 8:45 am]

BILLING CODE 3810-AE-M

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment; U.S.S. NEWPORT NEWS

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that U.S.S. NEWPORT NEWS (SSN-750) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval submarine. The intended effect of this rule is to warn marines in waters where 72 COLREGS apply.

EFFECTIVE DATE: December 2, 1987.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400 Telephone number: (202) 325-9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 32 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegated by the Secretary of the Navy, has certified that U.S.S. NEWPORT NEWS (SSN-750) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that U.S.S. NEWPORT NEWS (SSN-750) is a member of the SSN 688 class of

vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to U.S.S. NEWPORT NEWS (SSN–750).

Morever, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

Vessel	Number	Distance in meters of forward masthead light below minimum required height, § 2(a)(i), Annex I
U.S.S. NEWPORT NEWS	SSN–750	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

Vessel	Number	Masthead lights, arc of visibility; Rule 21(a)	Side lights, arc of visibility; Rule 21(b)	Stern light, arc of visibility; Rule 21(c)	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I	Stern light distance forward of stern in meters; Rule 21(c)	Foward anchor light, height above hull in meters; § 2 (k), Annex I	Anchor lights, relationship of aft light to forward light in meters; § 2 (k), Annex I
U.S.S. NEWPORT NEWS	SSN–750			209°	4.3	6.1	3.4	1.7 below.

Dated: December 2, 1987.

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

[FR Doc. 87–28949 Filed 12–16–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 87–11]

Drawbridge Operation Regulations; Deep River, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the Washington Department of Transportation (WDOT), the Coast Guard is temporarily changing the regulations for operation of the State Route 4 Bridge across Deep River. The temporary rule will provide that the swingspan of the bridge need not open for the passage of vessels. The construction of an adjacent fixed span replacement bridge will make it impossible for the swingspan to be opened. The existing bridge will be removed from the waterway upon completion of the new fixed highway bridge. The existing to-be-replaced bridge has not opened for the passage of vessels in four years. This change is intended to eliminate temporarily the requirement that the bridge open on signal after at least four hours advance notice. All operating regulations for the existing bridge will be revoked upon the completion of the new bridge and the removal of the existing bridge. This operating regulation provides for the reasonable needs of navigation.

EFFECTIVE DATE: November 16, 1987.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442–5864).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking has not been published for this temporary rule and it is being made effective in less than 30 days after **Federal Register** publication. A comment period has not been provided because this rule provides adequately for the reasonable needs of navigation on the waterway. Drawings for the adjacent bridge were circulated in a public notice prior to approval of a permit for the new bridge. These drawings showed the close proximity of the adjacent structures and made it clear that the construction of the new bridge would prohibit the operation of the swingspan.

Drafting Information

The drafters of this notice are: Austin Pratt, project officer, and Lieutenant Commander Lawrence I. Kiern, project attorney.

Discussion of the Proposed Regulations

The Washington Department of Transportation has asked the Coast Guard to approve a change to the operating regulations because the approved location of the replacement bridge makes operation of the existing swingspan impossible. It is not feasible to construct the new bridge at that location without interfering with the operation of the movable bridge.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Navigation and marine related businesses will not be affected by this temporary rule because the subject bridge has not been required to open in over four years. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is temporarily amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46 (c)(5).

2. Section 117.1039 is temporarily amended to read as follows:

§ 117.1039 Deep River.

The draw of the Washington State highway bridge, mile 3.5, near Deep River, need not open for the passage of vessels during construction of the adjacent replacement bridge.

Dated: November 16, 1987.

G.A. Penington,

Captain, U.S. Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 87-27138 Filed 12-16-87; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

[CGD13 87-06]

Security Zone; Hood Canal, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule adopts regulations which establish a permanent security zone in the waters of Hood Canal immediately adjacent to the Naval Submarine Base, Bangor, Washington. The U.S. Navy has requested the establishment of this security zone to protect assets which are vital to the national interest. The northern and southern shoreside limits of the security zone have been established to coincide with the northern and southern land boundaries of the Submarine Base. The security zone extends westward into Hood Canal a sufficient distance to enhance the security of vessels at the Submarine Base by permitting early detection of unauthorized entry while avoiding interference with the through passage of vessels transiting Hood Canal.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: LT. G. M. Jacobson, (206) 442-5537. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: On September 14, 1987, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** for these regulations (52 FR 34687). Interested persons were requested to submit comments and one comment was received.

Drafting Information

The drafters of this final rule are LT. G. M. Jacobson, Project Officer, Port and Vessel Safety Branch, Thirteenth Coast Guard District, and Lieutenant A. W. Bogle, Project Attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Comments

Only one comment was received in response to the publication of the notice of proposed rulemaking. This comment, submitted by the U.S. Navy, requested a change to the southern origin of the security zone from: latitude 47°43'24"N, longitude 122°44'37"W to latitude 47°43'17"N, longitude 122°44'44"W. This change shifts the next point of the security zone boundary to latitude 47°43'32"N, longitude 122°44'40"W. This change is necessary to cause the southern shoreside end point of the security zone to coincide with the southern land boundary of the Submarine Base as was contemplated in the notice of proposed rulemaking. As a result of a clerical error, the wrong latitude and longitude for the two southern points of the security zone had been published in the notice of proposed rulemaking. Additionally, the Navy suggested a clarification to the description of the Northern shoreside boundary of the security zone and has provided a latitude and longitude for this point. The clarification has no effect on the boundary of the security zone. The requested revisions have been incorporated into the final rule.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Except for the small additional area added to allow the land boundary of Submarine Base and the southern boundary of the security zone to coincide, the area affected by this security zone is already restricted to navigation by the existing restricted zone. Even in the absence of this restricted zone, those interests affected would be primarily recreational, and the loss of the use of this part of the canal should not affect their use of the canal for navigation or other purposes except in a very minor way.

Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulations

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. Section 165.1302 is added to read as follows:

§ 165.1302 Bangor Naval Submarine Base, Bangor, WA.

(a) *Location.* The following is a security zone: The waters of the Hood Canal encompassed by a line commencing on the east shore of Hood Canal at latitude 47°43'17" N., longitude 122°44'44"W., thence to latitude 47°43'32" N., longitude 122°44'40" W.; thence to latitude 47°43'50" N., longitude 122°44'40" W.; thence to latitude 47°44'24" N., longitude 122°44'22" W.; thence to latitude 47°45'47" N., longitude 122°43'22" W.; thence to latitude 47°46'23" N., longitude 122°42'42" W.; thence to latitude 47°46'23" N., longitude 122°42'20" W.; thence to latitude 47°46'20" N., longitude 122°42'12" W.; thence southerly along the shoreline to the point of beginning.

(b) *Security zone anchorage.* The following is a security zone anchorage: Area No. 2. Waters of Hood Canal within a circle of 1,000 yards diameter centered on a point located at latitude 47°46'26" N., longitude 122°42'49" W.

(c) *Special Regulations.* (1) Section 165.33 paragraphs, (a), (e), and (f) do not apply to the following vessels or individuals on board those vessels:

(i) Public vessels of the United States, other than United States Naval vessels.

(ii) Vessels that are performing work at Naval Submarine Base Bangor pursuant to a contract with the United States Navy which requires their presence in the security zone.

(iii) Any other vessels or class of vessels mutually agreed upon in advance by the Captain of the Port and Commanding Officer, Naval Submarine Base Bangor. Vessels operating in the security zone under this exemption must have previously obtained a copy of a certificate of exemption permitting their operation in the security zone from the Security Office, Naval Submarine Base Bangor. This written exemption shall state the date(s) on which it is effective and may contain any further restrictions on vessel operations within the security zone as have been previously agreed upon by the Captain of the Port and

Commanding Officer, Naval Submarine Base Bangor. The certificate of exemption shall be maintained on board the exempted vessel so long as such vessel is operating in the security zone.

(2) Any vessel authorized to enter or remain in the security zone may anchor in the security zone anchorage.

(3) Other vessels desiring access to this zone shall secure permission from the Captain of the Port through the Security Office of the Naval Submarine Base Bangor. The request shall be forwarded in a timely manner to the Captain of the Port by the appropriate Navy official.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and monitoring of this security zone by the U.S. Navy.

Dated: December 1, 1987.

T.J. Wojnar,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 87-28986 Filed 12-16-87; 8:45 am]

BILLING CODE 491-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-1-FRL-3300-8]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Reasonably Available Control Technology for Belding Corticelli Thread Co.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes and requires the use of reasonably available control technology (RACT) to control volatile organic compounds (VOC) emissions from the Belding Corticelli Thread Company (Belding) in Putnam, Connecticut. The intended effect of this action is to approve a source-specific RACT determination made by the State in accordance with commitments made in its Ozone Attainment Plan which was approved by EPA on March 21, 1984 (49 FR 10542). This action is being taken in accordance with section 110 of the Clean Air Act.

EFFECTIVE DATE: This rule will become effective January 19, 1988.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Room 2313, Boston, MA 02203; Public Information Reference Unit, EPA Library, 401 M Street SW., Washington, DC 20460; and the Air Compliance Unit, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106.

FOR FURTHER INFORMATION CONTACT: David B. Conroy, (617) 565-3252; FTS 835-3252.

SUPPLEMENTARY INFORMATION: On March 25, 1987 (57 FR 9502), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Connecticut. The NPR proposed approval of State Order No. 8007 as a revision to the Connecticut SIP. The provisions of the Connecticut Department of Environmental Protection's (DEP's) State Order define and impose RACT on Belding as required by subsection 22a-174-20(ee), "Reasonably Available Control Technology for Large Sources," of Connecticut's Regulations for the Abatement of Air Pollution.

Under subsection 22a-174-20(ee), the Connecticut DEP determines and imposes RACT on all stationary sources with the potential to emit one hundred tons per year or more of VOC that are not already subject to RACT under Connecticut's regulations developed pursuant to the control techniques guidelines (CTG) documents. EPA approved this regulation on March 21, 1984 (49 FR 10542) as part of Connecticut's 1982 Ozone Attainment Plan. That approval was granted with the agreement that all source-specific RACT determinations made by the DEP would be submitted to EPA as source-specific SIP revisions.

EPA has reviewed State Order No. 8007 and has determined that the level of control required by this Order represents RACT for Belding. The application of RACT by Belding, which consists of installing pollution control equipment by December 31, 1987 on each of its thread coating machines that will be in operation after December 31, 1987, will reduce Belding's actual emissions from approximately 100 tons per year to less than 37 tons per year. The requirements of the State Order and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Since submission of the formal SIP revision by the State of Connecticut, Belding has indicated to the Connecticut DEP that it may choose to shut down all of its thread coating machines by December 31, 1987 in order to achieve compliance with the State Order. This compliance strategy is consistent with the requirements of the State Order. Therefore, the requirements of the State Order regarding the pollution control equipment will only apply to Belding if Belding chooses to operate any of its thread coating machines after December 31, 1987.

Final Action

EPA is approving Connecticut State Order No. 8007 as a revision to the Connecticut SIP. The provisions of State Order No. 8007 define and impose RACT on the Belding Corticelli Thread Company to control VOC emissions as required by subsection 22a-174-20(ee) of Connecticut's regulations.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 16, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Date: December 7, 1987.

Lee M. Thomas,

Administrator.

Subpart H, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart H—Connecticut

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.370 is amended by adding paragraph (c)(39) to read as follows:

§ 52.370 Identification of plan

* * * * *

(c) * * *

(39) Revisions to the State Implementation Plan submitted by the Connecticut Department of

Environmental Protection on August 24, 1987.

(i) Incorporation by reference.

(A) Letter from the Connecticut Department of Environmental Protection dated August 24, 1987 submitting a revision to the Connecticut State Implementation Plan.

(B) State Order No. 8007 for Belding Corticelli Thread Company dated July 13, 1987.

[FR Doc. 87-28505 Filed 12-16-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 431, 435, 440, and 441

[BERC-513-F]

Medicaid Program; Relations With Other Agencies, Miscellaneous Medicaid Definitions, Third Party Liability Quality Control, and Limitations on Federal Funds for Abortions

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: These final regulations (1) revise Medicaid rules to reflect current policy on State payment of cost sharing amounts under Medicare Part B "buy-in" agreements; (2) revise and clarify certain Medicaid definitions; (3) remove the requirement that State plans include third party liability quality control reviews as part of the State's Medicaid quality control system; and (4) provide for limitations on the use of Federal funds for abortion.

These final regulations allow States with Medicare Part B buy-in agreements the option of paying cost sharing amounts for Medicaid beneficiaries for those Medicare services that States do not cover in their Medicaid plans. States may pay cost sharing amounts under Medicare Part B buy-in agreements on all, some or none of the Part B Medicare services that are covered in the Medicaid plan.

We are revising definitions and clarifying ambiguities in several existing Medicaid regulations. The revisions are to the definitions of private duty nursing services, inpatient and outpatient, inpatient and outpatient hospital services, and other laboratory and x-ray services.

We are removing the requirement in our quality assurance regulations that States monitor third party liability errors as a part of their quality control system. Instead, we plan to issue regulations which encourage improved third party liability (TPL) operations by making them an integral component of State Medicaid Management Information System subject to periodic evaluation through systems performance reviews.

We are revising the Medicaid regulations to provide for limitations on the use of Federal funds for abortion, in accordance with previously enacted laws.

EFFECTIVE DATE: These regulations are effective January 19, 1988. State agencies have until 90 days after receipt of a revised State plan preprint to submit their plan amendments and required attachments. We will not hold a State to be out of compliance with the requirements of these final regulations if they submit the necessary preprint plan material by the date.

FOR FURTHER INFORMATION CONTACT:

Bill Lasowski, Relations with Other Agencies, (301) 597-1301

Thomas Hoyer, Miscellaneous Medicaid Definitions, (301) 594-9446

Lester Belsky, Third Party Liability, (301) 594-6710

Luisa Iglesias, Limitations on FFP for Abortions, (202) 245-0383.

I Background

On March 11, 1983, we published in the **Federal Register** at 48 FR 10378, a proposed rule (NPRM) to solicit comments on proposed changes to the regulations on Part B buy-in and Medicaid definitions. The revisions were intended to simplify and clarify regulations, delete requirements that are unnecessary or burdensome to States as well as to the public, and provide maximum flexibility to States while promoting patient health and safety.

The existing Medicare Part B buy-in provisions of the regulations have been cited as burdensome by States. States with buy-in agreements, under section 1843 of the Social Security Act (the Act), have been required to pay, in addition to the Part B premium, the Part B coinsurance and deductible amounts (cost sharing amounts) for all services provided to beneficiaries under Part B of Medicare, even if those same services were not covered in the Medicaid State plan. Some States objected to the payment of Medicare cost sharing amounts for services they had chosen to exclude from coverage under their Medicaid plans. In addition, the court, in *Fob James, et al.* v. *Richard Morris, et al.*, (U.S.D.C. M.D. Ala., N. Div., Civil Action No. 80-172-N), held that our interpretation of the policy set forth at 42 CFR 431.625 was not supported by the statute. (This case was incorrectly cited as *James* v. *Harris* in the NPRM. Copies of this opinion are available from HCFA upon request.)

We also included in the March 11, 1983 NPRM, revised Medicaid definitions of inpatient outpatient, inpatient and outpatient hospital services, private duty nursing services, inpatient psychiatric services and reserved beds. Our intent in proposing these revised definitions was to remove unintentional inconsistencies and avoid misinterpretation between definitions that appear in Parts 440 and 441 of these regulations.

On August 9, 1983, we published in the **Federal Register**, at 48 FR 36151, an NPRM to solicit comments on proposed changes to the Medicaid quality control claims processing and third party liability (TPL) requirements. In those proposed regulations, we included a proposal to remove the quality control systems requirement applicable to performing TPL reviews because those reviews were time consuming for States, and produced questionable data. In addition, past reviews have shown that TPL error rates, as calculated in accordance with existing procedures, have remained consistently low.

II. Response to Public Comments

In response to our request for comments on the March 11, 1983 publication, we received a total of 29 comments from physicians and physician associations, medical equipment suppliers, client advocacy groups, State agencies, a university, a State governor, and a member of the U.S. House of Representatives. In response to our request for comments on the August 9, 1983 publication, we received a total of six comments from States on the elimination of TPL quality control requirements.

A. Comments on the Buy-in Provisions

1. *Comment:* Some commenters argued that the revisions to 42 CFR 431.625 violate the requirements of section 1902(a)(15) of the Act. This section requires that when a State pays only a portion of the Medicare copayments and deductibles for those individuals who are entitled to both Medicare and Medicaid, that portion must be related to the beneficiary's income and resources. One commenter contends that this rule directly contradicts the statutory provision because it would allow States to reduce payment of Medicare coinsurance and deductibles for dually entitled individuals without any established justification based on either the income

or resources of the beneficiaries affected.

Response: Although there is no statutory basis to require States to pay the Part B cost sharing amounts on those Part B services that are not covered under the State Medicaid plan, if a State does choose to pay a portion of the cost sharing on noncovered services, it must be done in accordance with section 1902(a)(15) of the Act. We agree with the commenters that section 1902(a)(15) of the Act imposes an income related test to determine the amount that a recipient is required to pay. The district court, in *James v. Morris* concluded that this income related test does not apply when services are not covered in the State plan, unless a State elects to pay a part of the cost sharing for those noncovered services.

Therefore, we are revising § 431.625(c) to remove any ambiguity that if a State elects to pay a portion of the Medicare cost sharing amount for a noncovered service, the amount paid by a State must be reasonably related to an individual's income and resources. A State must define the term reasonably related in its State plan.

2. *Comment:* Two commenters believed that the proposal could be interpreted to permit States to terminate payment of all Medicare Part B cost sharing amounts. Another commenter questioned whether the proposed change could be interpreted to limit dually entitled individuals (persons entitled to both Medicare and Medicaid) to benefits provided under the State Medicaid plan and, thus, deprive them of the full Medicare benefits legally mandated for all Medicare beneficiaries. Two of these commenters recommended that we clarify our intent and publish a new NPRM accordingly.

Response: In the summary paragraph to the NPRM, we stated that the proposed regulations would "allow States the option of paying cost sharing amounts for Medicaid beneficiaries who are covered under Medicaid Part B buy-in agreements." It was not our intention that States could terminate payment on all Medicare Part B cost sharing amounts, as the summary may have inadvertently suggested. We believe that the subsequent discussion in the preamble and the regulation text made this clear. Rather, a State may choose to make cost sharing payments on all, some, or none of those Medicare Part B benefits that the State does not cover in its Medicaid State plan. When the amount paid by third parties is less than the State's Medicaid payment amount, we will continue to require that a State pay cost sharing amounts on those Medicare Part B Benefits that the State covers in its Medicaid plan.

Under this rule, when a State Medicaid agency elects not to pay the cost sharing charges for dually entitled individuals for services not covered in its State plan, such dually entitled individuals would remain entitled to the full, uniformly mandated range of Medicare benefits available for all Medicare beneficiaries, subject only to the requirements relating to deductibles and coinsurance which are uniformly applicable to all Medicare beneficiaries.

Morever, while commenters both agreed and disagreed with the proposed rule, virtually all commenters clearly understood the thrust of the rule. For this reason, it would be unnecessary for us to republish this rule in proposed form. However, we are revising § 431.625(c) to clarify that a State has the option of paying the deductible and coinsurance amounts "for those Medicare Part B services" not covered under the Medicaid State plan. We believe that this language is more precise than "on a full range of Medicare Part B services" which was used in the proposed regulation.

3. *Comment:* Some commenters contend that under the revised regulations, as State will be able to select the Part B services on which it will pay cost sharing amounts for dually entitled individuals. They conclude that this will establish a class distinction between Medicare beneficiaries with income to pay part B premiums and cost sharing amounts and those without income, and that benefits will vary widely from State to State. Several commenters were concerned that if States do not pay Part B cost sharing amounts on certain services, individuals eligible for both Medicare and Medicaid would be responsible for those payments, and that those individuals can least afford to pay Medicare cost sharing amounts. A commenter predicted that providers may refuse treatment, and individuals may be denied necessary health care.

Response: Congress has given the States discretion in selecting services to be covered under their Medicaid programs. We believe that a regulation requiring States to pay for services not covered under their plans improperly interferes with the flexibility intended by Congress. Moreover, the majority of Medicare Part B services are also covered Medicaid services under most State plans. The only Part B services not mandatorily covered under Medicaid are speech and physical therapy, services of podiatrists and chiropractors, and the rental of certain medical equipment. These services may be furnished under coverage options selected by the State under its State plan or may be covered in connection with one of the mandatory services (medical equipment, and speech and physical therapy may be covered as home health services). Further, individuals who cannot afford the Part B cost sharing amounts for uncovered services are no worse off than similarly situated individuals in States that do not have a buy-in agreement. If an individual paid the Part B premium, instead of the State, the individual would still be obligated to meet the cost sharing requirements of the Medicare program. We believe that an individual's inability to meet the cost sharing requirements of the Medicaid or Medicare programs does not result in unlawful class distinction because those individuals who are covered by a buy-in agreement, but who cannot afford the Part B cost sharing amounts are already in a more favorable position than other Medicaid recipient who are entitled to services covered by Medicare. There is an exemption from the "comparability of services" requirement to permit this result. The exemption to the comparability requirement, however, does not specify that States must pay the Medicare cost sharing amounts for recipients covered under a buy-in program. Nor does the exemption impose an additional comparability requirement with respect to the amounts of the Medicare cost sharing that a State pays for recipients under a buy-in program. Moreover, the buy-in program confers upon the individual eligible for both Medicare and Medicaid an additional benefit, which is beyond the scope of services that a State provides to other Medicaid recipients. When viewed as an additional benefit, rather than as part of the Medicaid services package, the recipient is hardly disadvantaged because the State elects not to cover any of the cost sharing obligations for Part B services that it does not cover for its Medicaid eligibles.

The effect on benefits will vary from State to State depending on how comprehensive the State plan is on coverage of services. All dually entitled individuals will remain entitled to the full scope of Medicare benefits subject to deductible and coinsurance requirements applicable to all Medicare beneficiaries.

Therefore, we believe that it is reasonable to require that individuals pay cost sharing amounts on Medicare Part B services that a State does not cover in its Medicaid plan. We also believe that if a State decides that it will

be cost effective to pay certain cost sharing amounts for services not otherwise covered under the Medicaid State plan, then the State will continue to make those payments.

Finally, if providers refuse treatment, this result would be no different than would be the case if the State did not buy-in for Medicare Part B and the individual had only Medicaid covered services to rely on, or if the individual were not Medicaid eligible and could not afford the Part B cost sharing amounts. Furthermore, a State, by selecting what services it will cover under its Medicaid program has made a determination which services it believes are necessary for its Medicaid population. This regulation removes ambiguity by making it clear that the State is not obligated to pay the cost sharing amounts with respect to services that are covered by Medicare Part B, but not covered by Medicaid.

4. *Comment:* Three commenters expressed the view that our proposed revisions to the buy-in provision in 42 CFR 431.625 conflict with the intent of the buy-in agreement. The commenters believe that the buy-in agreement is intended to assure that individuals eligible for both Medicare and Medicaid receive the full scope of Medicare benefits even if they lack the income to pay Part B cost sharing amounts.

Response: We disagree with the commenters' view of the purpose of the buy-in provision and the buy-in agreement. We believe that the buy-in was enacted to permit States to take advantage (at a cost saving to the Medicaid program) of the coverage of services which is available under Medicare Part B to individuals who would qualify for Part B coverage if they paid their Part B premiums. We have not found any support in the legislative history of the buy-in for the proposition that States must pay the Medicare cost sharing amounts for any uncovered services by virtue of their electing to participate in a buy-in agreement. This view is supported by the *James* v. *Morris* decision. Under these final regulations, a State must continue to pay cost sharing amounts on Medicare Part B benefits that are covered in its State Medicaid plan (subject to State limits on reimbursement and amount, duration and scope of services as explained in the response to comment 8). We do not believe that this provision is contrary to the intent of buy-in agreements.

5. *Comment:* Two medical equipment suppliers believe that since Medicare is the primary payer under a buy-in agreement, the States should not control what are "covered" services and the resulting payments.

Response: The Medicare and Medicaid programs are designed with different coverage of services. While Medicare operates under uniform regulations that are applicable nationwide, the statutory framework of Medicaid gives States substantial leeway to offer different ranges of coverage, especially among optional services. Section 1902(a)(10)(A) establishes the services that are mandatory under Medicaid and gives States the option of covering certain additional services specified in section 1905(a). One purpose of this rule is to clarify each State's authority to establish what is or is not a covered optional benefit under its Medicaid program. The rule will remove a barrier if a State wishes to prevent situations where its program would give greater benefits to one Medicaid recipient than to another Medicaid recipient who is not entitled to Medicare coverage.

6. *Comment:* One State agency asked whether States would also have the option of not paying cost sharing amounts on Medicare services not covered under the State's Medicaid plan when a Medicaid recipient pays his own Part B premium.

Response: This comment is beyond the scope of these regulations. Under State buy-in agreements, States pay the Part B premium for those individuals included in their coverage groups. These groups include all individuals entitled to Medicare Part B who are receiving or are eligible for a category of assistance under Medicaid as specified in the State's buy-in agreement. Inclusion in one of the State coverage groups is the basis for buy-in coverage, and not whether the individual can actually pay his own premiums. Individuals who do not qualify for inclusion in one of these coverage groups are responsible for paying their own Medicare Part B premium. States are not required to pay cost sharing amounts for those individuals who pay their own Part B premiums in the case of services not covered under the Medicaid plan.

7. *Comment:* Three medical equipment suppliers predicted that the regulations will be difficult for home care and durable medical equipment suppliers to administer when billing and administering the collection of payments for services that are not covered under a State Medicaid plan, and that the increased administrative costs would be passed on to all customers. It will be particularly complex for companies doing business in multiple States.

Response: The burden of knowing what services are covered by Medicaid in the various States serviced rests upon each Medicaid provider. Under the buy-in agreement, the billing and collection practices imposed for services covered by Medicare but not covered under the State plan will work on the same principle as they do for Medicare-only beneficiaries. We recognize that these regulations might result in some administrative problems and increased costs for suppliers. However, we believe that suppliers already have administrative procedures in place for billing and collection of Medicare-only claims that can accommodate these changes and lessen the impact of administrative burden. In any event, we believe that the language in the Act and interpretation by the court in *James* v. *Morris* justify these changes.

8. *Comment:* One State agency asked whether States have the option to limit payment of Part B cost sharing amounts in accordance with State limitations imposed on Medicaid services covered under the State plan.

Response: Yes, if a State limits the amount, duration or scope of Medicaid services covered in the State plan, then the State may similarly limit payment of Medicare Part B cost sharing amounts on those same services in accordance with its Medicaid service limitations. For example, if a State plan provides that a State pays for a maximum of five home health visits per year, then the State must pay the copayments on each of those five visits, but is not required to do so on visits exceeding the fifth. Additional examples are in Part 7373 of the State Medicaid Manual.

9. *Comment:* One commenter asked how individuals eligible for both Medicare and Medicaid will be advised of the difference between the State's contribution and their own contribution if the individuals need Part B services which the State excludes under its Medicaid plan.

Response: Under 42 CFR 435.905, the State has the responsibility at the time Medicaid eligibility is established to inform individuals which services are covered under Medicaid. Should the State Medicaid benefit package change after eligibility is established, the State is required, under 42 CFR Subpart E, 431.200, 431.221, and 431.230, to mail a notice to individuals receiving Medicaid benefits at least 10 days before the State reduces services. Individuals thus should be aware of the services for which the State will pay.

10. *Comment:* One commenter asked who will determine the cost sharing amounts for Medicare services the State has chosen not to cover under its Medicaid plan.

Response: Records on cost sharing amounts are maintained by the

Medicare carrier (the organization under contract to the Federal government to process Medicare Part B claims). Individuals needing information on cost sharing amounts can contact either the State Medicaid agency, or the appropriate Medicare carrier.

11. *Comment:* One State agency suggested that we add title IV–E recipients to the list in 42 CFR 431.625(d) of Medicaid recipients receiving cash payments for whom Federal financial participation (FFP) is available in State expenditures for Medicare Part B premiums, as such recipients may be eligible for Medicare Part B services.

Responses: Individuals receiving foster care and adoption assistance payments under title IV–E of the Act are eligible for Medicaid on the same basis as title IV–A recipients (Aid to Families with Dependent Children, AFDC). Sections 472(h) and 473(b) of title IV–E of the Act specify that individuals receiving foster care maintenance payments and adoption assistance payments, respectively, are deemed to be recipients of AFDC under title IV–A of the Act. These same individuals may also be eligible for Medicare Parts A and B if they receive Social Security disability insurance benefits under section 223 of the Act, or child's insurance benefits based on disability under section 202(d) of the Act. In response to this comment, we reexamined the list in § 431.625(d) and found that several other groups were missing. We have expanded the list to include not only the title IV–E recipients, but six other groups for whom State-paid Medicare Part B premiums FFP is currently available. Members of these groups are by statute considered to be recipients of Federal Supplemental Security Income (SSI) benefits, qualifying State Supplementary Payments or title IV–A benefits (AFDC). Therefore, they are encompassed within the authority of section 1903(a)(1) of the Act to provide for FFP in State expenditures for their Part B premiums.

12. *Comment:* Two commenters were opposed to our reference to the district court opinion of *James v. Morris.* Their objections were based on the fact that this is an unreported judicial decision that was not appealed to a higher court and has no precedential value.

Response: We are authorized to make changes to regulations in the interest of removing unnecessary requirements and constraints so that States have greater flexibility in administering the Medicaid program. We must ensure that regulations are clearly within the authority delegated by law and consistent with Congressional intent.

Although we have made reference to this court decision, the decision is not the sole basis for revising the regulations. As stated in the proposed rule, several States have objected to our current ambiguous rules. The court decision supports the need for revising the regulations. It was not intended that the court decision be understood as compelling these changes, but that it might help the public to better understand the changes. Moreover, it has binding effect in Alabama, and may be considered to be persuasive authority in other jurisdictions, especially since it is the only court decision on the issue it addresses.

B. Comments on Medicaid Definition Changes

1. *Comment:* We received a comment from a client advocacy group which objected to our revision, in the absence of specific new or revised legislative intent, of the definition of private duty nursing services, which describes the settings in which private duty nursing services can be furnished.

Response: In the original Medicaid legislation (the 1965 amendments to the Social Security Act), Congress listed private duty nursing services among the services that could be covered under the program, without defining them. By not defining the term "private duty nursing services" in the legislation or accompanying committee reports, Congress left the responsibility to us for developing a reasonable interpretation of this term. We are making this revision because the existing regulations have been misinterpreted to mean that a State providing private duty nursing services must provide those services in all three settings: The recipient's home, a hospital, or a skilled nursing facility. This was not our original intent. Our revision merely clarifies our original intent that States have flexibility, and may limit the provision of these services to any one or more of the three cited locations. We believe that our revision is a reasonable interpretation of the law and gives States maximum flexibility in covering this benefit. The private duty nursing benefit is an optional one, and States generally have considerable latitude in defining the scope of optional services. This flexibility serves as an incentive for States to elect coverage of these services, by allowing States to tailor optional services to the specific needs of their populations.

2. *Comment:* A State agency asked whether the revisions to the regulations at 42 CFR 440.160 and 441.151 specifying requirements for Medicaid coverage of inpatient psychiatric services affect coverage of psychiatric services furnished in general (nonpsychiatric) hospitals. One client advocacy group objected to the revised language in §§ 440.160 and 441.151, which requires that inpatient psychiatric services for individuals under age 21 be provided "in a psychiatric facility or an inpatient program in a psychiatric facility." Section 440.160 previously stated that those services be provided "in a facility or program," and § 441.151 specified that services be provided "by a psychiatric facility or an inpatient program in a psychiatric facility." The commenter contends that our revised language inappropriately excludes coverage of services under an accredited inpatient program when those services are not furnished "in" the psychiatric facility itself. Examples are day treatment in community settings for institutionalized children, and services to assist in the transition from institutional to community living.

Response: We are not making the proposed revisions to §§ 440.160 and 441.151 dealing with inpatient psychiatric services for individuals under age 21 because amendments to the Act made by Pub. L. 99–272 in regard to this benefit require that we reassess our policy before we revise the regulations.

3. *Comment:* We received comments from the two State agencies on our proposed revision to the inpatient hospital services definition in 42 CFR 440.10. One commenter suggested that the regulations be revised to require actual participation in Medicare by a hospital, rather than merely specify that the hospital meet the requirements for such participation. Another commenter expressed concern that, by specifying that hospitals must meet the Medicare requirements for participation as a hospital, rather than as a skilled nursing facility (SNF), the regulations might be interpreted as excluding coverage for services in hospital units that provide less than acute care, yet are not certified or operated as SNFs.

Response: Regarding the first issue, Medicaid regulations at 42 CFR 440.10(a)(3)(iii), in defining inpatient hospital services, have always required that hospitals meet the requirements for participation in Medicare, as opposed to actually requiring them to participate in Medicare. Our purpose in having a hospital meet the requirements for participation in Medicare is to ensure that the hospital staff and facilities meet certain standards of quality, without the reduction in State and provider flexibility that would occur if we made actual participation in Medicare a prerequisite for participation in

Medicaid. However, States may make participation in Medicare a condition for Medicaid participation if they so choose. Regarding the second concern, our intent is simply to specify the conditions of participation that define a facility as a hospital under Medicaid. We believe the commenter mistook the change we proposed as intended to preclude the existence of distinct part SNFs or ICFs in hospital buildings. The revision would not have this effect.

3. *Comment:* We received comments from two State agencies, one university, two provider associations and one client advocacy group on our proposed revisions to the outpatient hospital services definition in 42 CFR 440.20(a). The comments all pertained to the provision that would allow a State to exclude from the definition those items and services that are not generally furnished by most hospitals in the State. The State agencies expressed support for any changes that would give them greater flexibility in this area. Several commenters were concerned that this revision would allow a State to exclude highly specialized outpatient hospital services that are not generally furnished by most hospitals in the State, yet are essential to meet the health needs of specific patient populations. These services might not be otherwise available, or might be available only in the more costly inpatient hospital setting. Additionally, one commenter expressed concern that in predominately rural States, a broad range of outpatient services might be concentrated in a small minority of larger, urban hospitals. These States could, under the definition proposed in the NPRM, exclude all of these services, since they are not "generally furnished by most hospitals in the State."

Response: We believe that our changes would not produce the results that the commenters anticipate. It was our intent that § 440.20(a)(4) permit States to exclude from the definition of "outpatient hospital services" only those broad generic categories of services (for example, dental services) that are not generally furnished by most hospitals in the State. Outpatient hospital services, as specified in § 440.20(a)(1), continue to include preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished to outpatients. Thus, States must continue to cover those generic services that are generally furnished by most hospitals, such as physicians' services, nursing services, and diagnostic tests. The commenters expressed concerns that mainly related to the treatment of specific illnesses (for example, cancer in children, sickle cell anemia, spina bifida), rather than generic service categories. The commenters apparently were concerned that the proposed revision would permit States to exclude individual items and services within a generally furnished category when they are associated with the treatment of specific medical conditions. We believe that this regulation would not have that effect. Under 42 CFR 440.230(c), a State may not arbitrarily deny or reduce the amount, duration or scope of a required service solely because of the recipient's diagnosis, type of illness, or condition. However, in view of the comments, we are clarifying in § 440.20(a)(4) that a State may exclude "types of items and services" rather than "items and services."

5. *Comment:* We received comments from two State agencies and one provider organization regarding our proposed definitions of the terms inpatient and outpatient in 42 CFR 435.1009, and 440.2(a). We proposed that inpatient satus be determined by a patient's stay of at least 24 hours or by the medical institution's decision to admit an individual as an inpatient with the expectation that he or she will receive room, board and professional services in the institution for a 24-hour period or longer, even if this expectation is not realized. Two commenters were concerned that certain outpatient visits might be inappropriately classified as inpatient stays under this provision. One noted that a hospital might routinely allege an "expectation" of an inpatient stay in all instances. The other commenter suggested that an individual who stays for less than 24 hours be recognized as an inpatient only when items or services typical of an inpatient stay are used. A third commenter expressed the opposite concern—that some inpatient stays might be classified inappropriately as outpatient visits. This commenter described a situation in which an individual is admitted as an outpatient, but subsequently develops a need for care that is far more intensive than originally anticipated, and dies or is discharged before 24 hours elapse.

Response: Regarding the first concern (outpatient visits inappropriately classified as inpatient stays), if a hospital attempts to bill inappropriately for an outpatient visit as if it were an inpatient stay, the hospital risks having the entire claim rejected. We believe that in the claims review process, States should be able to detect hospitals that have patterns of inappropriate classification of outpatient visits as inpatient stays. Some factors they might consider, for example, in evaluating these patterns are the nature of the conditions for which admission is made or the provision of items and services that they regard as typical of an inpatient stay. Due to the changing nature of inpatient and outpatient services, however, we believe that it would be difficult to develop a definitive, nationwide set of criteria identifying services that are "typically" inpatient.

Regarding the second concern (inpatient stays inappropriately classified as outpatient visits), under the new inpatient definition, as under the previous definition, the decision on whether or not to admit an individual as an inpatient remains with the provider. This gives the provider flexibility in dealing with individual cases. Thus, if a hospital outpatient's condition should suddenly deteriorate, the hospital could decide at that point to admit the individual as an inpatient.

C. Comments on Elimination of Third Party Liability (TPL) Quality Control Requirements

Comment: Three commenters were opposed to our removal of third party liability monitoring activities from State plan quality control review requirements in § 431.800. These commenters indicated that information from those reviews led to the identification of liable third parties and substantial recoveries, resulting in direct savings to State Medicaid programs. Even though States have the option to continue TPL reviews, one State contended that those reviews would be funded entirely by the State, and continued reviews, therefore, would be unlikely because of fiscal limitations. One State commented that technical assistance from Federal staff, proposed as an alternative to required reviews, had not been useful in the past.

Response: We are eliminating the requirement that States do TPL-QC reviews for several reasons. These reviews were a burden on State resources, and the reliability and utility of the data from the reviews, as they have been conducted, have been questionable. Moreover, because TPL quality control error rates, as currently calculated, have remained consistently low, we believe that continuing nationwide TPL quality control activities in the same manner as other quality control monitoring activities is not warranted.

Our interest in TPL has not diminished, however. We are merely changing the focus of Medicaid TPL oversight. We intend to continue with aggressive operational improvements and regulation changes to specify

effective procedures for TPL identification, data matching and use of TPL information. TPL operations will become an integral component in State Medicaid Management Information Systems, subject to periodic evaluation through the System Performance review. In addition, we plan to notify States of model TPL practices that we have identified, focusing on the potential for substantial Medicaid savings and suggesting opportunities for States to establish cost effective TPL practices. States may, if they choose, continue their TPL quality control program or another case review system, and the administrative expenditures for such programs will be eligible for FFP in accordance with 42 CFR 433.15. We will no longer require the activities, however, as a part of State plan requirements relating to quality control systems.

D. Additional Technical Changes

Subpart E of Part 441 of the existing Medicaid rules specifies that FFP is available in State expenditures for abortions only if continuation of the pregnancy would endanger the mother's life, or the pregnancy is the result of rape or incest. Section 402 of Pub. L. 97–12 and later laws that appropriate funds for the Medicaid program, including section 204 of Pub. L. 98–619, prohibit the use of Federal funds to pay for abortions except when continuation of the pregnancy would endanger the mother's life. This provision is more restrictive than the provisions that were in effect when the regulations on abortions were last published.

We have revised Part 441 of the Medicaid regulations to reflect the limitation imposed by Pub. L. 97–12, and extended by later legislative documents that provide funds for the Medicaid program. The provision of FFP in State payments in cases of rape or incest is removed.

This is merely a conforming change. The provisions of Pub. L. 97–12 and the later legislative documents have been implemented as early as 1981 through instructions to the States and Regional Offices.

In addition to the revisions noted above, we are making a minor and technical revision to 42 CFR 440.30(c). Existing paragraph (c) requires that an independent laboratory participating in Medicaid must meet the requirements for participation in Medicare. We believe that, when the regulation was drafted, the intention was to refer to the Medicare requirements for independent laboratories. Consequently, we are revising § 440.30(c) by rephrasing it to clarify that "other laboratory and x-ray services" means services furnished by a laboratory that meets the Medicare conditions for coverage of services for independent laboratories under Part 405, Subpart M. We are rephrasing paragraph (c) to make it clear that 42 CFR 440.30 does not apply to any services furnished by a laboratory that is part of a hospital, skilled nursing facility or rural health clinic participating in the Medicare program. The conditions that apply to these laboratories are in 42 CFR Part 405, Subparts J, K and X, respectively.

In the March 11, 1983 NPRM, we proposed to clarify an ambiguity in existing Medicaid regulations at 42 CFR 447.40 concerning Medicaid payment for reserved beds. The clarification proposed in the March 11, 1983 publication has been accomplished by final regulations published on July 3, 1986 (51 FR 24484).

III. Revisions To The Regulations

A. We are adopting the proposed rule published on March 11, 1983 (48 FR 10378) as final with minor editorial corrections and the following revisions to the proposed regulations:

1. To the basis and purpose in § 431.625(a), we are adding a new paragraph (5) to reference section 1902(a)(15) of the Act.

2. In § 431.625, we are breaking paragraph (c) into two subparagraphs. In paragraph (c)(1), we are clarifying that a State has the option of paying the deductible and coinsurance amounts "for those Medicare Part B services" not covered under the State plan. This is more precise than "on a full range of Medicare Part B services" which appeared in the proposed regulation. In new paragraph (c)(2), we specify that when a State pays a portion of Medicare Part B cost sharing amounts, the amount paid must be reasonably related to a recipient's income and resources.

3. In § 431.625, we are breaking paragraph (d)(1) into two subparagraphs, revising the wording for clarity, and adding seven groups inadvertently omitted from the previous listing. Subparagraph (d)(1) is revised to set forth the basic rule regarding availability of FFP for payment of Medicare Part B premiums, and a new paragraph (d)(2) is added to indicate the exceptions to that rule. To new paragraph (d)(2), we are adding the following groups of individuals to the list of Medicaid recipients receiving cash payments for whom FFP is available in State expenditures for Medicare Part B premiums, since these recipients may also be eligible for Medicare benefits:

(a) Individuals receiving foster care maintenance payments and adoption assistance payments who, under title IV–E of the Act, are considered as receiving AFDC payments.

(b) Individuals required to be covered under 42 CFR 435.120, that is, blind or disabled individuals who, under section 1619(b) of the Act, are considered to be receiving SSI.

(c) Individuals who, in accordance with 42 CFR 435.115 and 436.114 are, for purposes of Medicaid eligibility, considered to be receiving AFDC. These are participants in a work supplementation program, or individuals denied AFDC because the payment would be less than $10.

(d) Recipients of Veterans Administration pensions who, under section 310(b) of Pub. L. 97–272, are considered to be eligible for SSI, mandatory State supplements, or AFDC.

(e) Disabled children living at home to whom the State provides Medicaid under section 1902(e)(3) of the Act.

(f) Individuals who, in accordance with section 406(h) of the Act, become ineligible for AFDC because of the collection or increased collection of child or spousal support, but remain eligible for Medicaid for four more months.

(g) Individuals who, in accordance with section 402(a)(37) of the Act, become ineligible for AFDC because they are no longer eligible for the disregard of earnings of $30 or of $30 plus one third of the remainder, but are considered as receiving AFDC for an additional period of time.

4. We are revising § 440.20(a)(4) to clarify that a Medicaid agency may exclude from the definition of outpatient hospital services those types of items and services that are not generally furnished by most hospitals in the State.

B. We are adopting the portions of the proposed rule dealing with third party liability, published on August 9, 1983 (48 FR 36151) as final. In 42 CFR 431.800, we are removing requirements for States to conduct third party liability quality control reviews in paragraphs (a), (b), (d) and (g).

C. We are making a technical revision to § 440.30(c) to clarify that "other laboratory and x-ray services" means services furnished by a laboratory that meets the Medicare conditions for coverage of services for independent laboratories, (42 CFR Part 405, Subpart M). Without the clarification, there could be confusion over whether the section referred to requirements for participation under Subpart M or the conditions in Subparts J, K, and X.

respectively. This revision does not alter either coverage or billing provisions.

D. We are revising Subpart E of Part 441 by removing § 441.204 [Reserved] and § 441.205, Rape and Incest, and by making conforming changes to § 441.202, 441.206 and 441.208 to eliminate references to deleted § 441.205.

IV. Waiver of Proposed Rulemaking

We ordinarily publish notices of proposed rulemaking in the **Federal Register**, and offer the public an opportunity to comment on proposed rules. Such notices include a statement of the nature of the rulemaking proceeding, reference to the legal authority under which the rule is proposed, and the terms or substance of the proposed rule or a description of the subjects and issues involved. However, this requirement can be waived when we find good cause that such a notice and comment procedure is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and its reasons in the rule issued.

The revisions to Part 441, Subpart E relating to limitations on the use of Federal funds for abortions are merely those necessary to conform the regulation text to statutory provisions and appropriations documents that have been implemented as early as 1981 through instructions to States and the Regional Offices. Accordingly, we have concluded that issuance of these legislative changes for notice and comment would be unnecessary and contrary to the public interest. Therefore, we find good cause to waive the proposed rulemaking procedure.

With regard to the revisions to regulations at 42 CFR 440.30(c), we believe that, since these technical revisions are merely clarifications of our original intent, and in no way affect any existing practices in any State, it is unnecessary to publish them in proposed form. We further believe that no purpose would be served and it would not be in the public interest to delay publication of these revisions. Therefore, we find good cause to waive proposed rulemaking for the regulatory provisions in § 440.30(c).

V. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to result in:

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices, for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612), we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have significant economic impact on a substantial number of small entities.

In the NPRM published on March 11, 1983 (48 FR 10378), we stated on assumption that about two-thirds of States with Medicare Part B buy-in agreements would elect not to pay cost sharing amounts for Medicaid recipients for those Medicare services that States do not cover in their Medicaid plans. We estimated that Federal savings resulting from this possible outcome would be $5 million in FY 1984 and $6 million FY 1985.

Comment: Two client advocacy groups disagreed with our estimate of the economic impact of these regulations. They believe that the impact will exceed $100 million, which would require us to prepare and publish a regulatory impact analysis under Executive Order 12291. Several commenters argued that the regulations would not result in State or Federal savings and might increase costs because some individuals, unable to pay Part B cost sharing amounts, may seek Part B services in a different setting where the service is covered under the Medicaid plan. If the Medicare service is covered under the State Medicaid plan, the State would be required to pay the cost sharing amounts.

Response: We believe that these comments reflect a misinterpretation of the intent of these regulations. Our estimate was based upon the assumption that States may choose to pay cost sharing amounts under Medicare Part B buy in agreements on all, some, or none of the Part B benefits that are not covered in the States' Medicaid plan. We believe that the commenters have included in their estimates cost sharing amounts for Part B benefits that are covered in the States' Medicaid plan.

For the final regulation, we are updating the assumptions and methodology involved with the previous estimate. We still contend that the major assumption affecting potential savings is the number of States that elect to exercise this option.

Updating the estimate involved surveying the twelve States that pay the highest amounts of premiums for Medicare buy-ins to determine their expected programmatic changes in response to this option. The survey indicates that some States would elect the option of not paying the coinsurance amounts, while several others expressed uncertainty about any potential changes. Thus, we are not able to conclude how States will respond to the change to current buy-in agreements. Absent this information it is not possible to develop a quantified estimate of FFP savings resulting from these changes to our current regulations. However, given current amounts of FFP paid as the Federal cost-sharing for these Part B services, and, furthermore, assuming that States' responses will range between not paying the cost-sharing amounts to paying the full cost-sharing amount for non-Medicaid-covered Part B services, potential Federal savings could range from $0 to 10 million annually. A State's savings would be 80 percent of actual Federal savings related to FFP paid to that State in any one year.

We expect a small impact of providers currently furnishing noncovered services for which States are paying copayment under Medicare. If States choose to discontinue paying copayment, there may be an effect on some providers, such as home health agencies. In view of the difficulty in predicting the response of States, it is not feasible to analyze this impact.

As noted in section II. A of the preamble, we are adding to the regulation seven groups of Medicaid recipients receiving cash payments to the list of Medicaid recipients for whom FFP is available to States for expenditures for Medicare Part B premiums. This change merely conforms the regulation to the statutory requirement and to what has already been implemented.

As noted in the NPRM, the revision to the definition of outpatient hospital services provides that the States may, at their discretion, exclude services not generally furnished as outpatient hospital services by most hospitals in a State. Data are not currently available to determine the extent to which States are now paying for these services or the extent to which they will choose to exercise this option. However, although it is not possible to estimate the budgetary impact of these provisions, based on our programmatic experience we believe that the economic effect is not significant.

By removing the requirement that States perform TPL quality control reviews, we believe that the accompanying Federal burden on States

will be reduced and the States will have greater flexibility. It is not possible to estimate the economic impact this will have on State operations.

In view of the preceding discussion, this regulation does not require an analysis under either Executive Order 12291 or the Regulatory Flexibility Act. We have determined, and the Secretary certifies, that these final regulations will not have a significant economic impact on a substantial number of small entities.

VI. Reporting Requirements

This regulation does not contain information collection requirements under the Paperwork Reduction Act. Therefore, we have not submitted a copy of this rule to OMB for its review under the Paperwork Reduction Act.

List of Subjects

42 CFR Part 431

Grant programs-health, Health facilities, Medicaid, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Part 441

Family planning, Grant programs-health, Infants and children, Medicaid, Penalties, Prescription drugs, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 431—STATE ORGANIZATION AND GENERAL ADMINISTRATION

1. The authority citation for Part 431 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act. (42 U.S.C. 1302).

Subpart M—Relations With Other Agencies

2. Section 431.625 is amended by revising paragraph (a), by revising and redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 431.625 Coordination of Medicaid with Medicare part B.

(a) *Basis and purpose.* (1) Section 1843(a) of the Act requests the Secretary to have entered into an agreement with any State that requested that agreement before January 1, 1970, or during calendar year 1981, under which the State could enroll certain Medicare-eligible recipients under Medicare part B and agree to pay their premiums.

(2) Section 1902(a)(10) of the Act (in clause (II) following subparagraph (D)), allows the State to pay the premium, deductibles, cost sharing, and other charges for recipients enrolled under Medicare part B without obligating itself to provide the range of part B benefits to other recipients; and

(3) Section 1903 (a)(1) and (b) of the Act authorizes FFP for State payment of Medicare part B premiums for certain recipients.

(4) This section—

(i) Specifies the exception, relating to part B coverage, from the requirement to provide comparable services to all recipients; and

(ii) Prescribes FFP rules concerning State payment for Medicare premiums and for services that could have been covered under Medicare.

(5) Section 1902(a)(15) of the Act requires that if a State chooses to pay only a portion of deductibles, cost sharing or other charges for recipients enrolled under Medicare Part B, the portion that is to be paid by a Medicaid recipient must be reasonably related to the recipient's income and resources.

* * * * *

(c) *Effect of payment of premiums on State liability for cost sharing.* (1) State payment of Part B premiums on behalf of a Medicaid recipient does not obligate it to pay on the recipient's behalf the Part B deductible and coinsurance amounts for those Medicare Part B services not covered in the Medicaid State plan.

(2) If a State pays on a recipient's behalf any portion of the deductible or cost sharing amounts under Medicare Part B, the portion paid by a State must be reasonably related to the recipient's income and resources.

(d) *Federal financial participation: Medicare Part B premiums*—(1) *Basic rule.* Except as provided in paragraph (d)(2) of this section, FFP is not available in State expenditures for Medicare Part B premiums for Medicaid recipients unless the recipients receive money payments under title I, IV–A, X, XIV, XVI (AABD or SSI) of the Act, or State supplements as permitted under section 1616(a) of the Act, or as required by section 212 of Pub. L. 93–66.

(2) *Exception.* FFP is available in expenditures for Medicare Part B premiums for the following groups:

(i) AFDC families required to be covered under §§ 435.112 and 436.116 of this subchapter, those eligible for continued Medicaid coverage despite increased income from employment;

(ii) Recipients required to be covered under §§ 435.114, 435.134, and 436.112 of this subchapter, those eligible for continued Medicaid coverage despite increased income from monthly insurance benefits under title II of the Act;

(iii) Recipients required to be covered under § 435.135 of this subchapter, those eligible for continued Medicaid coverage despite increased income from cost-of-living increases under title II of the Act;

(iv) Recipients of foster care maintenance payments or adoption assistance payments who, under Part E of title IV of the Act are considered as receiving AFDC;

(v) Individuals required to be covered under § 435.120 of this chapter, that is, blind or disabled individuals who, under section 1619(b) of the Act, are considered to be receiving SSI;

(vi) Individuals who, in accordance with §§ 435.115 and 436.114 of this chapter are, for purposes of Medicaid eligibility, considered to be receiving AFDC. These are participants in a work supplementation program, or individuals denied AFDC because the payment would be less than $10;

(vii) Certain recipients of Veterans Administration pensions during the limited time they are, under section 310(b) of Pub. L. 96–272, considered as receiving SSI, mandatory State supplements, or AFDC;

(viii) Disabled children living at home to whom the State provides Medicaid under section 1902(e)(3) of the Act;

(ix) Individuals who become ineligible for AFDC because of the collection or increased collection of child or spousal support, but, in accordance with section 406(h) of the Act, remain eligible for Medicaid for four more months; and

(x) Individuals who become ineligible for AFDC because they are no longer eligible for the disregard of earnings of $30 or of $30 plus one-third of the remainder, but, in accordance with section 402(a)(37) of the Act, are considered as receiving AFDC for a period of 9 to 15 months.

(3) No FFP is available in State Medicaid expenditures that could have been paid for under Medicare part B but were not because the person was not enrolled in part B. This limit applies to all recipients eligible for enrollment under part B, whether individually or through an agreement under section 1843(a) of the Act. However, FFP is available in expenditures required by §§ 435.914 and 436.901 of this subchapter for retroactive coverage of recipients.

Subpart P—Quality Control

3. Section 431.800 is amended by removing the definition of "Third-party

liability error" from paragraph (b), and revising paragraphs (a), (d)(4), and (i)(1) to read as follows:

§ 431.800 Medicaid quality control (MQC) system.

(a) *Basis and purpose*—(1) *Basis.* This subpart implements the following sections of the Act, which establish requirements for State plans and for payment of Federal financial participation (FFP) to States:

1902(a)(4) Administrative methods for proper and efficient operation of the State plan.

1903(u) Limitation of FFP for erroneous medical assistance expenditures.

(2) *Purpose.* This section establishes State plan requirements for a Medicaid quality control system designed to reduce erroneous expenditures by monitoring eligibility determinations, and claims processing.

* * * * *

(d) *Basic elements of an MQC eligibility system.* The agency—

* * * * *

(4) Must review any claims pertaining to each active case to identify erroneous payments resulting from—

(i) Ineligibility; and

(ii) Recipient understated or overstated liability.

* * * * *

(i) *Corrective action.* The agency must—

(1) Take action to correct any eligibility, or negative case action errors found in the sample cases;

* * * * *

PART 435—ELIGIBILITY IN THE STATES, THE DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for Part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 435.1009 is amended by revising the definition of "inpatient" and by adding in alphabetical order the definition of "outpatient".

§ 435.1009 Definitions relating to institutional status.

* * * * *

"Inpatient" means a patient who has been admitted to a medical institution as an inpatient on recommendation of a physical or dentist and who—

(1) Receives room, board and professional services in the institution for a 24 hour period or longer, or

(2) Is expected by the institution to receive room, board and professional services in the insitution for a 24 hour period or longer even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the institution for 24 hours.

* * * * *

"Outpatient" means a patient of an organized medical facility or distinct part of that facility who is expected by the facility to receive, and who does receive, professional services for less than a 24-hour period regardless of the hour of admission, whether or not a bed is used or whether or not the patient remains in the facility past midnight.

* * * * *

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for Part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 440.2(a) is amended by revising the definition of "Outpatient" and by adding in alphabetical order the definition of "Inpatient".

§ 440.2 Specific definitions; definitions of services for FFP purposes.

(a) *Specific definitions.*

"Inpatient" means a patient who has been admitted to a medical institution as an inpatient on recommendation of a physician or dentist and who—

(1) Receives room, board and professional services in the institution for a 24 hour period or longer, or

(2) Is expected by the institution to receive room, board and professional services in the institution for a 24 hour period or longer even though it later develops that the patient dies, is discharged or is transferred to another facility and does not actually stay in the institution for 24 hours.

"Outpatient" means a patient of an organized medical facility, or distinct part of that facility who is expected by the facility to receive and who does receive professional services for less than a 24-hour period regardless of the hour of admission, whether or not a bed is used, or whether or not the patient remains in the facility past midnight.

* * * * *

3. Section 440.10 is amended by revising paragraph (a)(3)(iii) to read as follows. The introductory texts of paragraphs (a) and (a)(3) are republished.

§ 440.10 Inpatient hospital services, other than services in an institution for mental diseases.

(a) "Inpatient hospital services means services that—

* * * * *

(3) Are furnished in an institution that—

* * * * *

(iii) Except in the case of medical supervision of nurse-mid wife services, as specified in § 440.165, meets the requirements for participation in Medicare as a hospital; and

* * * * *

4. Section 440.20 is amended by revising paragraph (a)(3)(ii) and adding paragraph (a)(4) to read as follows. The introductory text of paragraphs (a) and (a)(3) are republished.

§ 440.20 Outpatient hospital services and rural health clinic services.

(a) "*Outpatient hospital services*" means preventive, diagnostic, therapeutic, rehabilitative, or palliative services that—

* * * * *

(3) Are furnished by an institution that—

* * * * *

(ii) Except in the case of medical supervision of nurse-midwife services, as specified in § 440.165, meets the requirements for participation in Medicare as a hospital; and

(4) May be limited by a Medicaid agency in the following manner: A Medicaid agency may exclude from the definition of "outpatient hospital services" those types of items and services that are not generally furnished by most hospitals in the State.

* * * * *

5. Section 440.30 is amended by reprinting the introductory text and revising paragraph (c) as follows:

§ 440.30 Other laboratory and X-ray services.

"Other laboratory and X-ray services" means professional and technical laboratory and radiological services—

* * * * *

(c) Furnished by a laboratory that meets the Medicare conditions for coverage of services for independent laboratories.

6. Section 440.80 is revised to read as follows:

§ 440.80 Private duty nursing services.

"Private duty nursing services" means nursing services for recipients who require more individual and continuous care than is available from a visiting nurse or routinely provided by the

nursing staff of the hospital or skilled nursing facility. These services are provided—

(a) By a registered nurse or a licensed practical nurse;

(b) Under the direction of the recipient's physician; and

(c) To a recipient in one or more of the following locations at the option of the State—

(1) His or her own home;

(2) A hospital; or

(3) A skilled nursing facility.

PART 441—SERVICES: REQUIREMENTS AND LIMITS APPLICABLE TO SPECIFIC SERVICES

1. The authority citation continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. Section 441.200 is revised to read as follows:

§ 441.200 Basis and purpose.

This subpart implements section 402 of Pub. L. 97–12, and subsequent laws that appropriate funds for the Medicaid program, including section 204 of Pub. L. 98–619. All of these laws prohibit the use of Federal funds to pay for abortions except when continuation of the pregnancy would endanger the mother's life.

3. Section 441.201 is revised to read as follows:

§ 441.201 Definition.

As used in this subpart, "physician" means a doctor of medicine or osteopathy who is licensed to practice in the State.

4. Section 441.202 is revised to read as follows:

§ 441.202 General rule.

FFP is not available in expenditures for an abortion unless the conditions specified in §§ 441.203 and 441.206 are met.

§ 441.205 [Removed]

5. Section 441.205 is removed.

6. Section 441.206 is revised to read as follows:

§ 441.206 Documentation needed by the Medicaid agency.

FFP is not available in any expenditures for abortions or other medical procedures otherwise provided for under § 441.203 if the Medicaid agency has paid without first having received the certifications and documentation specified in that section.

7. Section 441.208 is revised to read as follows:

§ 441.208 Recordkeeping requirements.

Medicaid agencies must maintain copies of the certifications and documentation specified in § 441.203 for 3 years under the recordkeeping requirements at 45 CFR 74.20.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: June 26, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: September 25, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–28903 Filed 12–16–87; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86–455; RM–5088, RM–5337, RM–5766]

Radio Broadcasting Services; Andalusia, Brantley, and Georgiana, AL; and Crestview, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 282A to Brantley, Alabama (in lieu of Channel 262A as proposed by the *Notice*) in response to the petition of Stewart Marsh and Virgil Leon Strickland for first FM service at Brantley. At the request of Crestview Broadcasting Company, licensee of Station WAAZ–FM, Crestview, Florida, Channel 284C2 is substituted for Channel 285A and its license modified to specify the Class C2 Channel. In addition, Channel 279A is substituted for Channel 284A at Andalusia, Alabama, and the construction permit for Station WAAO–FM, modified accordingly, in order to accommodate the Brantley and Crestview allotments. The counterproposal of Mac Carter requesting the allotment of Channel 262A to Georgiana, Alabama, has been dismissed at Carter's request in order to consider allotting Channel 262C2 to Georgiana, as a conflicting proposal in Docket 86–470. With this action, this proceeding is terminated.

DATES: Effective January 22, 1988. The window period for filing applications for Channel 282A at Brantley, Alabama, will open on January 25, 1988, and close on February 24, 1988.

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86–455, adopted November 23, 1987, and released December 10, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased form the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended for Andalusia, Alabama, by removing Channel 284A and adding Channel 279A; Brantley, Alabama, Channel 282A is added; and for Crestview, Florida, by removing Channel 285A and adding Channel 284C2.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–28863 Filed 12–16–87; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

[NASA FAR Supplement Directive 85–9]

Miscellaneous Amendments to NASA FAR Supplement; Correction

AGENCY: Office of Procurement, Procurement Policy Division, NASA.

ACTION: Final rule, Correction.

SUMMARY: This document, published Thursday, December 10, 1987, beginning on page 46765, published amendments to the NASA Federal Acquisition Regulation Supplement (NFS), but inadvertently failed to remove sections which are no longer applicable.

FOR FURTHER INFORMATION CONTACT: W.A. Greene, Procurement Policy

Division (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: (202) 453–2119.

S.J. Evans,

Assistant Administrator for Procurement.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR Part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. On page 46771, in the second column, amendatory instruction e., is corrected to read as follows:

e. Sections 1852.227–14, 1852.227–19, and 1852.227–86 are added and sections 1852.227–74 through 1852.227–81 and 1852.227–83 are removed to read as follows:

[FR Doc. 87–28982 Filed 12–16–87; 8:45 am]

BILLING CODE 7510-01-M

Proposed Rules

Federal Register
Vol. 52, No. 242
Thursday, December 17, 1987

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR PART 121

Small Business Size Standards for Construction and Surveying Services Industries and Subcontracting Limitations

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to amend its size standards for the construction industry division (except heavy construction, not elsewhere classified, and dredging), and for the surveying services industry. In addition, subcontracting limitations, requiring that at least 15 percent of the contract labor value for general contractors and 25 percent for special trades must be performed with the winning contractor's work force on set-aside and 8(a) contracts, are being proposed for the construction industries. The proposed size standard revisions are pursuant to identical requirements of Pub. L. 99–591 and Pub. L. 99–661. The issuance of proposed rules to implement the public laws was made known to the public through an "Advance Notice of Proposed Rulemaking" (ANPRM) on March 17, 1987 (52 FR 8261).

Pub. L. 99–591 and 99–661 amend the Small Business Act in several areas. One amendment requires SBA to review four selected industry groups for the Fiscal Years 1984–86 to determine if the total dollar value of small business set-aside and SBA's 8(a) awards in any of these industries exceeds 30 percent of the value of overall Federal procurement awards in the respective industries. If so, the laws require SBA to lower the relevant industry size standard to a level that will likely reduce the total of small business set-aside and 8(a) awards to approximately 30 percent of total Federal procurements. SBA has conducted a review of Federal procurement awards in the following industry groups: Construction, architecture and engineering services (including surveying and mapping), shipbuilding and ship repair, and refuse systems and related services. Based on this review, SBA is proposing an amendment to its size standards in 26 industries. Pub. L. 99–591 and 99–661 also grant SBA the authority to establish segmented size standards to reflect special equipment, labor or geographic requirements. SBA is not proposing segmented size standards for the dredging and shipbuilding and ship repair industries that were presented for consideration in the March 17, 1987, ANPRM.

The legislation requiring the review of size standards also required that recipients of small business set-asides and 8(a) contracts agree to perform with its own employees: 50 percent of the cost of performance (excluding materials) of supply contracts (except for regular dealers); 50 percent of the cost of performance of service contracts; and, a similar requirement for construction, the proportion to be established by regulation. SBA proposes to amend its size regulation to implement these requirements, and in the case of construction is proposing that figures established in the SBA's regulation (13 CFR Part 124) for 8(a) firms be used as the reference point. This regulation states that "at least 15 percent of the contract labor value for general contractors and 25 percent of special trades, must be performed with the contractor's own work force." SBA encourages commentors to review closely these subcontracting limitations for construction as it wishes to establish percentages reflecting traditional industry practices in construction.

SBA is publishing this regulation for public comment as a step in the implementation of Pub. L. 99–591 and 99–661, which amended the Small Business Act to require adjustment of size standards to control the levels of small business set-aside and 8(a) awards in each SIC.

In addition to soliciting comments on the provisions of this Notice of Proposed Rulemaking, SBA is interested in receiving comments on any other methods for achieving the stated purposes of controlling the level of set-asides in Federal procurements. Commentors should address the elements of feasibility and impact relative to the existing method, when providing alternative approaches to the issue.

DATE: Comments to be submitted on or before February 16, 1988.

ADDRESSES: Address comments to: Monika Edwards Harrison, Chairperson, Size Policy Board, U.S. Small Business Administration, 1441 'L' Street, NW.—Room 600, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gene VanArsdale, (202) 653–6588.

SUPPLEMENTARY INFORMATION: Pub. L. 99–591 (An Act making continuing appropriations for Fiscal Year 1987) and an identical provision of Pub. L. 99–661 (National Defense Authorization Act for Fiscal Year 1987) require the Small Business Administration to complete a review of its size standards in four industry groups: Construction (all Standard Industrical Classification (SIC) codes in Major Groups 15, 16, and 17 of the SIC system); Architecture and Engineering Services, including Surveying and Mapping Services (SIC Codes 8711, 8712, and 8713, respectively); Shipbuilding and Ship Repair (SIC Code 3731); and Refuse System and Related Services (SIC Code 4953).

It should be noted that the construction and architectural and engineering services industry groups include a number of 4-digit SIC industries with separate size standards. Construction includes nine industries in general construction and 17 special trade industries. Architectural and engineering services have three industries with size standards. In addition, the two industry groups have three size standards based on components of two 4-digit SIC industries. Consequently, 31 industries covering 34 size standards were reviewed.

This proposal describes the data sources and methodologies for identifying the industries in the four major groups in which the total of set-aside and 8(a) contract dollars expended between FY 1984 and 1986 exceeded 30 percent of Federal procurement awards and for developing lower size standards that will likely reduce the total of small business set-aside and 8(a) awards to approximately 30 percent for industries above that level. Proposed size standards are listed at the end of the proposed rule for those industries requiring adjustment. The

proposal also describes a proposal for subcontracting limitations at specific percentages for the construction industry. This is followed by a discussion of the reasons for not proposing segmented size standards for the dredging and shipbuilding and ship repair industries.

Percent of Set-Asides by Industry

Table 1 presents the average FY 1984–86 total of set-aside and 8(a) awards as a percentage of all Federal procurement dollars for each Standard Industrial Classification (SIC) industry designated in the law for review. Set-aside contracts plus 8(a) contracts exceed 30 percent of Federal procurements for all construction industries, except SIC Code 1629 (Heavy Construction, Not Elsewhere Classified, and its dredging component which has a distinct size standard), and for the surveying services industry, SIC Code 8713 (formerly a part of SIC–8911).

TABLE 1.—PROCUREMENT DATA RELATING TO INDUSTRIES COVERED BY PUB. L. 99–591[1]

[M = millions of dollars]

SIC	Present size standard	Set-aside plus 8(a) procurement dollars	Total federal procurement dollars	Percent set-aside and 8 (a) awards	Percent in excess of 30 percent	Dollars targeted to be shifted to unrestricted category by lowering the size standard
Construction: Building Construction						
1521*	$17.0M	$142.5M	$314.3M	45.3	15.3	$48.1M
1522*	17.0M	127.3M	326.5M	39.0	9.0	29.4M
1531*	17.0M	8.0M	17.6M	45.7	15.7	2.7M
1541*	17.0M	586.5M	1,073.9M	54.6	24.6	264.2M
1542*	17.0M	1,854.9M	2,898.1M	64.0	34.0	985.4M
Construction Other Than Building						
1611*	$17.0M	$390.7M	$732.6M	53.3	23.3	$170.7M
1622*	17.0M	65.1M	123.6M	52.6	22.6	28.0M
1623*	17.0M	155.0M	216.3M	71.7	41.7	90.2M
1629 (Less Dredging)	17.0M	237.9M	1,142.9M	20.8	0.0	0.0M
1629 (Dredging Component)	9.5M	50.8M	306.7M	16.6	0.0	0.0M
Special Trades:						
1711*	$7.0M	$390.4M	$558.2M	69.9	39.9	$222.7M
1721*	7.0M	96.0M	107.1M	89.6	59.6	63.9M
1731*	7.0M	262.3M	419.5M	62.5	32.5	136.3M
1741*	7.0M	8.1M	11.7M	68.9	38.9	4.6M
1742*	7.0M	15.5M	23.0M	67.7	37.7	8.7M
1743*	7.0M	1.2M	1.5M	78.7	48.7	0.7M
1751*	7.0M	13.5M	14.7M	91.7	61.7	9.1M
1752*	7.0M	8.7M	9.9M	88.2	58.2	5.8M
1761*	7.0M	126.1M	141.2M	89.3	59.3	83.7M
1771*	7.0M	43.6M	47.6M	91.5	61.5	29.3M
1781*	7.0M	3.9M	7.1M	55.4	25.4	1.8M
1791*	7.0M	10.0M	21.9M	45.9	15.9	3.5M
1793*	7.0M	5.2M	5.8M	90.0	60.0	3.5M
1794*	7.0M	83.9M	111.3M	84.4	54.4	60.5M
1795*	7.0M	7.6M	9.5M	80.0	50.0	4.8M
1796*	7.0M	9.2M	17.5M	52.6	22.6	4.0M
1799*	7.0M	66.1M	127.9M	51.7	21.7	27.8M
Shipbuilding and Ship Repair						
3731	1,000E	$424.0M	$5,528.9M	7.7	0.0	$0.0M
Refuse Systems						
4953	$6.0M	$16.2M	$72.4M	22.4	0.0	$0.0M
Engineering, Architectural and Surveying						
8711(A)	13.5M	143.4M	1,011.6M	14.2	0.0	0.0M
8711(B)	9.0M	32.0M	446.0M	7.2	0.0	0.0M
8711**(C)						0.0M
8712	2.5M	108.7M	434.7M	25.0	0.0	0.0M
8713*	2.5M	17.4M	23.4M	74.0	44.0	10.3M

* = Size Standard Change Required By Law.
8711(A) = Engineering Services for Military and Aerospace Equipment and Military Weapons.

8711(B)=Engineering Services for Marine Engineering and Naval Architecture Services.
8711(C)=Engineering Services Unrelated to Military or Aerospace Equipment or Marine and Naval Architecture Services.
8712=Architectural Services (Other Than Naval).
8713=Surveying Services.
**=SBA is unable to separate activities related to 8711 (C) from 8712 for statistical purposes related to the implementation of the 30 percent rule. Until better data are received which is unique to either activity, SBA will retain the present size standards in these activites.
[1] Procurement Data are shown as 1984–86 average annual dollars.

The variation by SIC for those industries exceeding 30 percent was from 43 to 71 percent of all Federal purchases for general construction industries and for special trades industries it was from 45 to 94 percent. Set-aside and 8(a) contracts for Shipbuilding and Ship Repair were substantially below 30 percent. Similarly, set-asides for Refuse Systems, SIC–4953, at 23 percent, were well below the 30 percent threshold. For SIC–8711 to 8713, Engineering Architecture and Surveying (formerly grouped together under SIC–8911), the set-asides plus 8(a) share of the three industries averaged 16 percent of all Federal procurements. However, SIC–8713, Surveying Services, had a set-aside and 8(a) share of 74 percent.

The last two columns of Table 1 provide information relating to the targets which the statutes require SBA to consider when lowering its size standards. The goal in revising the size standard of SIC–1521 (Single-Family Housing Construction), for example, is to reduce the present size standard of $17 million (first column) to a level that is likely to reduce set-asides to 30 percent. This would be achieved by shifting 15 percent (fifth column) of Federal revenues in the industry from the set-aside to unrestricted category. Based on average contract data over the 1984–86 period, $48 million dollars in Federal contracts (sixth column) would have to move from the set-aside to unrestricted category for this industry to meet the 30 percent level. The proposed size standard for SIC–1521 is expected to be effective in reducing set-asides by $48 million. Similar projections are provided in Table 1 for every industry affected by the law.

Data

The laws direct the SBA to adjust size standards based on Federal procurement patterns for any 4-digit SIC code industry classified in the four major industry groups. Data for making such a determination are gathered by the Federal Procurement Data Center (FPDC) of the General Services Administration. No other agency of Government gathers aggregated Federal procurement data. Table 1 was developed from the FPDC data.

To understand the strengths and weaknesses of data gathered by the FPDC, it is useful to understand how a size standard is utilized in the process of setting aside a contract for small business. To determine the appropriate size standard for a contract, the Federal contracting officer must determine the industry most closely associated with the contract in question. A firm must then meet the size standard test for eligibility to bid on the contract. It is important to note that the firm may only be peripherally involved in the industry associated with the size standard. Firms often produce goods and/or services associated with more than one industry. The proper category to calculate an industry's percentage of set-asides to total Federal procurements is the industry or SIC code associated with the contract award.

To date, contract data have not been gathered by the FPDC on an industry basis. The only industry data which SBA was able to obtain from the FPDC is the primary SIC code of the business establishment receiving the contract, not the SIC code identified with the contract itself. Thus only an approximation is available of the extent of 8(a) and set-asides purchases for the individual industries based on contract information. The data, nevertheless, are considered reasonably close to the results which would have been obtained had SBA been able to gather the data in the form specified in the law. For the industries studied, and especially for the smaller size firms of the industry, the SIC classification of the firm is most likely the SIC classification of the procurement. Beginning in 1989, FPDC will be collecting data on the SIC code of awarded Federal contracts, as requested by SBA.

Adjusting Industry Size Standards

The table at the end of this proposed rule shows the proposed size standards for those industries identified in Table 1 which exceeded the 30 percent level. A methodology for adjusting size standards was developed by considering how set-aside contracts are selected. The method assumes that by eliminating from eligibility the larger small firms winning 8(a) or set-aside contracts it will be more difficult to set aside contracts. Consequently, the proportion of set-asides as a percent of total Federal procurement dollars would become lower.

A size standard is calculated which will eliminate from eligibility those larger small firms which have cumulatively been awarded set-aside and/or 8(a) contracts in excess of the 30 percent level. Table 2 illustrates this approach. All firms which received a set-aside or 8(a) contract in the industry are ranked by firm size (receipts from all sources). In the example, the largest small firm in the distribution had $6.9 million in sales with $4 million of its sales from set-aside and or 8(a) contracts. In order to achieve the desired 30 percent, $20 million in set-aside and/or 8(a) contracts would have to become unrestricted contracts. In this example, this is achieved by lowering the size standard to $5.8 million. This eliminates the largest small firms which have cumulatively been awarded set-aside and/or 8(a) contracts totaling $20 million.

TABLE 2.—HYPOTHETICAL EXAMPLE

Firms receiving set-aside and/or 8(a) contracts ranked by size of firm (M=millions of dollars)

Firm	Firm size	Total amount of the receipts awarded as firm's set-aside and/or 8(a) contracts over the year
A	$6.9M	[1] $4M
B	6.7M	[1] 1M
C	6.5M	[1] 5M
D	6.3M	[1] 3M
E	6.1M	[1] 3M
F	5.9M	[1] 4M
G	5.7M	[1] 3M

[1] Set the size standard to eliminate firms generating the targeted level of $20.0M in set-aside or 8(a) contracts by lowering the size standard from $7.0 to $5.8 million.

In order to calculate size standards using this method, SBA obtained microdata information from SBA's United States Establishment and Enterprise data base in which each contract awarded was identified with the size of firm winning the contract. SBA ranked firms active in the set-aside market by size of firm and these firms were cross-tabulated with awarded set-aside and 8(a) contracts to develop tables, such as Table 2, for each industry.

In the past SBA has also established a separate size standard for the activity of

base housing maintenance. This size standard was utilized if a contract involved the use of special trade contractors in different industries (plumbing, painting, plastering, carpentering, etc.). The size standard was $7 million (the same as all industries in special trades at that time) and it was utilized when three or more special trade activities were incorporated in the same contract.

The size standard for any contract composed of three or more special trade activities (formerly defined as a base housing maintenance) will now be the size standard of the special trade accounting for the greatest percentage of the total contract value. This is similar to the rule established for determining the size standard for other multiple-item contracts.

Subcontracting Limitations

The Advanced Notice of Proposed Rulemaking published March 17, 1987, stated that "SBA intends to use the statutory figure of 50 percent as its reference point for all service and supply (including manufacturing) industries, and the figures established in SBA's regulation (13 CFR Part 124) for 8(a) firms as the reference point for construction. This advance notice stipulated that "at least 15 percent of the contract labor value for general contractors and 25 percent of special trades must be performed with the contractor's own work force." There was in the public response to the March 17, 1987, notice, some favorable response to the figures of 25 percent and 15 percent as required levels for a contractors's own work force in special trades and general contracting, and they are retained in this proposed rule. In addition, public comment provided no special data to challenge the 50 percent figure for either supply or service contracts, although several submissions contained general discussion, pro or con, on the subcontracting limitations.

SBA is authorized to deviate from the 50 percent requirement for supply and service contracts for any industry where it is necessary to reflect conventional industry practices among business concerns that are below the industry category. Therefore, SBA is soliciting further comments concerning specific industry practices that would support any deviation from this proposal. In proposing the 15 and 25 percent subcontracting requirements for general contractors and special trades respectively, SBA is attempting to approximate traditional industry practices in construction. Any commentors who are able to provide information on traditional industry practices in the construction industries are encouraged to comment to the SBA.

Geographic Size Standards

In the Advance Notice of Proposed Rulemaking published on March 17, 1987, (52 FR 8261), SBA solicited comments on the subject of establishing separate geographic size standards for segments of the dredging and ship repair industries as authorized by the special segmentation provisions contained in Pub. L. 99-591 and Pub. L. 99-661. These segmented standards were:

SIC—3731 Shipbuilding and Ship Repair.

(At present this industry has a size standard of 1,000 employees).

(1) Nuclear ship repair and shipbuilding
(2) Shipbuilding (nonnuclear)
(3) Nonnuclear ship repair at:
  (a) Puget Sound/Portland
  (b) San Francisco
  (c) Los Angeles/Long Beach
  (d) San Diego
  (e) New England
  (f) New York/Philadelphia/New Jersey
  (g) Norfolk/Baltimore
  (h) Charleston
  (j) Jacksonville, Florida
  (j) Gulf Coast

SIC—1629 Heavy Construction, Not Elsewhere Classified—dredging component

(At present this industry has a size standard of $9.5 million in gross annual receipts).

(1) *Heavy Equipment/Dredging*
  (a) Northeast
  (b) Southeast
  (c) Gulf Coast
  (d) West Coast
  (e) Great Lakes
(2) *Light Equipment/Dredging*
  (a) Northeast
  (b) Southeast
  (c) Gulf Coast
  (d) West Coast
  (e) Great Lakes

SBA requested information which could establish significant differences within an industry based on capital equipment or special labor needs, or geographic requirements. SBA also sought the public's view as to whether the three statutory prerequisites which must be present before geographic segmentation of size standards may be established are present in the two industries. These prerequisites are: (1) The Government typically designates the area where work for such contracts is to be performed, (2) Government purchases comprise the major portion of the entire domestic market for such goods or services, and (3) due to the fixed location of facilities, high mobilization costs, or similar comments on the March 17, 1987, **Federal Register** AMPRM notice were received from private firms, industry associations, and Government agencies (e.g., Corps of Engineers). A majority of those commenting on the notice did not support segmented size standards for dredging. The comments included one dredging firm and one association that favored the concept of a regional standard, while four firms and two associations were opposed. Comments on segmented size standards for shipbuilding and ship repair were received as follows: Two firms and one asssociation favored the concept, four firms and one association were opposed, and one association reserved comment on this issue until a proposed rule was issued.

The respondents raised several concerns regarding the proposed segmentation. Respondents in both industries opposed the idea of segmented size standards based on legal considerations. In dredging, respondents argued that dredges are mobile, and therefore, the statutory condition precluding competition from outside the regions listed above is not met. In ship repair, respondents argued that firms could change their area of operation by either leasing space in another shipyard or by moving operations. Moreover, ships themselves are mobile allowing for contracts on a national or coast-wide basis. As a result, firms often compete with firms outside their regions.

In response to these objections, SBA also sought out the opinions of the Army Corps of Engineers for the dredging industry and the Navy for the ship repair industry. The Corps stated that the third requirement for segmentation was not present and opposed the proposal. The Navy does not support either geographic or equipment based segmentation of the ship repair size standard and prefers to continue following the current policies and procedures for ship repair set-asides. SBA concludes that neither the dredging nor the ship repair industry meet the statutory requirement that it is unlikely to expect competition from business concerns located outside of the general areas where such concerns are located. Accordingly, SBA is not proposing segmented size standards for these two industries.

Compliance With Regulatory Flexibility Act and Executive Order 12291

This proposed rule if made final would have a significant effect on a

substantial number of small firms as described in the Regulatory Flexibility Act. It would also constitute a major rule under E.O. 12291. The preceding information described the basis for this proposed rule, why it is being made, its objectives, and how it is to be implemented. The legal bases for this proposed rule are section 3 and 5(b) of the Small Business Act, 15 U.S.C. 632 and 634(b) and section 921 of Pub. L. 99–591. Below is an economic analysis of this proposed rule. It assesses the impact on small business eligibility (demographic impact) for SBA's programs, and the dollar impact on Federal procurements and the affected firms.

This rule would affect businesses within the construction and surveying industries in terms of their eligibility for SBA programs. Focusing on construction, as a proportion of total economic activity, Federal procurement represents only about 3 percent of all construction; nonetheless, it has significant implications for a certain segment of construction firms.

Because the law mandates reductions in the amount of set-aside contracting by changing the size standards, a number of firms will lose small business status, and consequently, lose eligibility for SBA programs. Also, some firms will not be successful in obtaining future Federal contracts as a result of a shift in contracts from the set-aside to the unrestricted method of Federal contracting as they had been in the past.

The proposed size standards have a distributional economic impact on the firms within an industry. The distributional economic impact for those firms losing small business eligibility may be assessed in terms of the demographic and dollar impacts. Those impacts are analyzed below.

The *demographic impact* is the number of firms which would be affected by the proposed rule. The broadest impact, and least consequential, simply quantifies the number of firms no longer defined as small business. SBA estimates that about 50,000 firms would lose small business status, or about 10 percent of a total of 500,000 construction and surveying firms listed in SBA's Small Business Data Base (SBDB). While this change can be disaggregated for each of the 26 industries affected, for convenience these results are presented for each major group in Table 3.

While these firms would lose small business status, the actual number of firms directly impacted would be less than 2 percent of the 500,000 firms because not all of these firms participate in Federal procurement or SBA's financial assistance programs. This smaller impact is estimated from an analysis of Federal procurement discussed below.

TABLE 3.—INDUSTRIES AND FIRMS AFFECTED BY PROPOSED SIZE STANDARDS

[B=billions of dollars]

Sic	Title	Number fo firms	No. of firms losing small business status	Industry sales
(1)	(2)	(3)	(4)	(5)
15	Building Const	187,383	12,628	$55.7B
16	Non-Building Const	22,792	3,969	19.0B
17	Special Trades	293,002	31,880	58.5B
C	Const. Subtotal	503,177	48,477	$133.2B
8713	Surveying Services	6,226	1,319	0.6B
	Total—All Industries	509,403	49,796	$133.8B

Source: Small Business Data Base, USEEM, 1984.

To obtain a more accurate picture of the direct impact, SBA's two principal programs were examined for the demographic effect. First, in the procurement assistance program, the PASS [1] lists about 26,000 construction firms and 1,200 surveying firms. This is about 5 and one-half percent of the 500,000 listed in the Small Business Data Base. While not all firms interested in Federal procurement are listed in PASS, those firms listed are more likely to be directly affected by a size standard change than those in the industry in general.

Due to the proposed size standards, it is estimated that based on the PASS data, approximately 8,000 construction and surveying firms would lose small business status. This impact is summarized in the following table.

TABLE 4.—NUMBER OF FIRMS IN PASS LOSING SIZE STATUS

Sic	Description	Number in PASS	Losing small business status
15	Gen. Construction	1,610	276
16	Gen. Constr.-Non Building	6,403	1,519
17	Special Trades	17,829	5,465
C	Construction Subtotal	25,842	7,260

[1] PASS (Procurement Automated Source System) is a computerized list of small businesses interested in Federal contracting and their capabilities. Any firm can be listed by filling out a simple form. Inclusion in PASS is not mandatory and is intended to help procuring agencies in identifying small businesses interested in doing business with the Federal Government.

TABLE 4.—NUMBER OF FIRMS IN PASS LOSING SIZE STATUS

Sic	Description	Number in PASS	Losing small business status
8713	Surveying Services	1,219	850
	Total—All Industries	27,061	8,110

Source: PASS, SBA Office of Procurement Assistance, data as of June 26, 1987.

The number of firms potentially impacted by the proposed rule is more likely to be closer to 8,000 firms or 1.6 percent of 500,000 firms shown in Table 3.

The number of guaranteed loans to firms made ineligible by the proposed size standards is small. Based on an analysis of SBA's major loan program, the Business Loans Program, an average of 901 loans per year to construction firms were made during FY 1984–86. No information is available as to the size of firms receiving these loans other than qualifying as small under the appropriate size standard. With a decline in eligibility of construction firms, either fewer loans would be made or the loans that would have been made to the newly ineligible firms would go to the remaining firms. If fewer loans were actually made, the impact could be on the same order of magnitude as firms losing eligibility as is shown in Table 3, that is, about a 10 percent decline based on the number of firms generally losing small business status. This would be a decrease of about 90 loans to construction firms per year.

The *dollar impact* of the proposed size standards can be broken out into three segments: General industry effect, procurement program effect, and financial program effect. First, the general industry effect is total sales (commercial and Federal) associated with the 50,000 firms losing small business status. As shown in Table 3, these firms generated $133.8 billion in industry sales. The proposed size standards will impact the sales generated by this group of firms. However, the impact is not on total industry sales, but those sales resulting from set-asides. This narrower impact has been analyzed as the procurement program effect.

The procurement program effect is estimated to equal $2.3 billion based on average 1984–86 levels. This is the value of Federal contracts which must be shifted away from small business set-asides to unrestricted contracts to meet the requirements of Pub. L. 99–591 that no more than 30 percent of total Federal contracts may be awarded as set-asides or 8(a) contracts in the specified industries. Table 5 shows this effect by major industry group.

TABLE 5.—SHIFT IN PROCUREMENT DOLLARS UNDER PROPOSED SIZE STANDARD

[B = billions of dollars]

Sic	Description	Procurement shift
15	Gen. Construction	$1.3B
16	Gen. Constr.-Non Building.	$0.3B
17	Special Trades	$0.7B
C	Construction Subtotal	$2.3B
8713	Surveying Services	Negligible
	Total—All Industries	$2.3B

Source: Special Tabulation of FPDC and SBDB/USEEM, 1984 + 1986 average.

In 1986 Federal procurements set aside for small business in construction totaled $4.5 billion. The shift of $2.3 billion away from set-asides would therefore bring about a 51 percent decline in construction dollars set aside for small business. This reduction would be incurred by an estimated 1,818 construction firms and 40 surveying firms according to a special tabulation of Federal Procurement Data Center and SBDB statistics for 1986. In 1986, 6,855 construction firms received set-aside contracts.

The estimated impact produced by implementing the law, $2.3 billion less in set-aside contracts, rests on the critical assumption that lowering the specified size standards will cause contracting agencies to replace that amount of set-asides with unrestricted contracts. Contracting agencies will be under no direct orders to reduce set-asides. It remains to be seen whether the indirect course of lowering size standards will have the required effect of reducing set-asides by more or less than $2.3 billion. If set-asides remain above 30 percent of total Federal procurements, then further adjustments to size standards will be considered.

Third, in SBA's major financial assistance program, the Business Loans Program, the dollar value of guaranteed loans which would have been received by those firms made ineligible by the proposed size standards reductions is estimated at about $14.6 million or about 0.5 percent of $3 billion of loans. This is derived from the estimated loss of 90 loans (see above) multiplied by the $162,000 average SBA loan amount for construction during 1984. Whether there actually will be a decrease in SBA's lending of this amount is uncertain, as this amount may simply be displaced to smaller firms which are still eligible. What could occur in some cases is a transfer rather than a net change in loans.

The economic analysis provided above focused on the distributional impacts of revised size standards. A broader economic analysis would also consider allocative impacts. These impacts are not examined, since they are expected to be minimal in the aggregate. For example, the allocation of resources between private and public purposes will not be affected. The overall level of Government spending for procurement will not change as a result of the size standards. Some arguments can be made that an efficiency gain on Federal procurements would occur as a result of lower size standards. These arguments would rest on the assumption that firms receiving unrestricted Federal procurements can perform at lower costs than small firms awarded set-aside procurements. These efficiency gains, if any, would be expected to be minimal for two reasons. First, competition between two or more small firms must exist before a contract may be set aside for small business. Second, set-asides are expected to be awarded at reasonable prices. Otherwise, the procuring agencies will issue unrestricted procurements if competition and reasonable pricing do not exist on the proposed set-asides. Thus the benefits in the form of cost savings to the Government are expected to be insignificant and were not quantitatively analyzed. Rather, the more relevant and more important distributional impacts are the focus of the economic analysis.

In addition, the proposed size standards are not expected to have an appreciable effect on the prices of goods and services, profit, growth, innovation, mergers, or foreign trade. The aggregated impact including firm failures, employment losses, community impact, and the effect on industry or the economy is not expected to be significant. The likelihood of firm failures and associated unemployment is very small if the proposed rule goes into effect, although there will likely be some individual firms which will lose Government contracts as a result of their loss of eligibility for set-aside contracts. However, as SBA states in its size standards regulations, 13 CFR 121.1(e), firms should not regard SBA's assistance "as permanent nor as the primary source of a firm's sales * * * and should plan for the day when they can compete without assistance."

SBA certifies that this proposed regulation contains no changed or special reporting or recordkeeping

requirements which are subject to the Paperwork Reduction Act.

Lists of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs-business, Loans programs-business, Small business.

Accordingly, the SBA proposes to amend Part 121 of 13 CFR as follows:

PART 121—[AMENDED]

1. The authority citation for Part 121 of 13 CFR would be revised to read as follows:

Authority: Pub. L. 99-591 and Pub. L. 99-661, Secs 3(a) and 5(b)(6) of the Small Business Act 15 U.S.C. 632(a) and 634(b)(6).

§ 121.2 [Amended]

2. In § 121.2(c)(2), Division C—Construction would be revised as follows:

Note: Upon adoption the "PROPOSED STANDARD" caption contained in Division C and Division I will be changed to read "FINAL RULE" to conform to the CFR format.

DIVISION C.—CONSTRUCTION

	Description—(N.E.C. = Not Elsewhere Classified)	Size standards in millions of dollars—Proposed Standard
Major Group 15—Building Construction—General Contractors and Operative Builders		
1521	General Contractors—Single-Family Houses	$2.0M
1522	General Contractors—Residential Buildings, Other than Single-Family	$9.75M
1531	Operative Builders	$1.25M
1541	General Contractors—Industrial Buildings and Warehouses	$5.25M
1542	General Contractors—Nonresidential Buildings, Other than Industrial Buildings and Warehouses	$3.50M
Major Group 16—Construction Other Than Building Construction—General Contractors		
1611	Highway and Street Construction	$4.00M
1622	Bridge, Tunnel and Elevated Highway Construction	$1.75M
1623	Water, Sewer, and Pipe Lines, Communication and Power Line Construction	$1.25M

DIVISION C.—CONSTRUCTION—Continued

	Description—(N.E.C. = Not Elsewhere Classified)	Size standards in millions of dollars—Proposed Standard
1629	Heavy Construction, Except Dredging, N.E.C.	$17.0M
1629	Dredging and Surface Cleanup Activities	$9.5M
Major Group 17—Construction—Special Trade Contractors		
1711	Plumbing, Heating (Except Electric), and Air Conditioning	$1.25M
1721	Painting, Paper Hanging, and Decorating	$.50M
1731	Electrical Work	$1.50M
1741	Masonry, Stone Setting, and Other Stonework	$1.50M
1742	Plastering, Drywall, Acoustical, and Insulation Work	$.25M
1743	Terrazzo, Title, Marble, and Mosaic Work	$1.25M
1751	Carpentering	$.75M
1752	Floor Laying and Other Floor Work, N.E.C.	$.75M
1761	Roofing and Sheet Metal Work	$1.00M
1771	Concrete Work	$.50M
1781	Water Well Drilling	$.75M
1791	Structural Steel Erection	$4.50M
1793	Glass and Glazing Work	$1.00M
1794	Excavating and Foundation Work	$.50M
1795	Wrecking and Demolition Work	$3.75M
1796	Installation or Erection of Building Equipment, N.E.C.	$2.75M
1799	Special Trade Contractors, N.E.C.	$2.50M
—	Base Housing Maintenance	Deleted

3. In § 121.2(c)(2), Division I—Services is proposed to be amended by adding SIC-8713 to read as follows:

DIVISION I.—SERVICES

Major Group 87—Miscellaneous Services		
8713	Surveying Services	$.25M

* * * * *

4. Section 121.5 is proposed to be amended by adding a new paragraph (h):

§ 121.5 Small business for Government procurement.

(h) A concern may not be awarded a contract for a Government procurement as a small business concern unless the concern agrees that:

(1) In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract with its own employees;

(2) In the case of a contract for supplies or products (other than procurement from a regular dealer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the cost of materials);

(3) In the case of a contract for general construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the cost of materials); and

(4) In the case of a contract for construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

Dated: December 11, 1987.

James Abdnor,

Administrator, U.S. Small Business Administration.

[FR Doc. 87-28891 Filed 12-16-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-150-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede two existing airworthiness directives (AD), applicable to certain Boeing Model 737 series airplanes, which currently require inspection for cracking of the wing front spar upper chord and repair, if necessary. This proposal would combine the inspections presently required by both AD's, extend the area to be inspected, and require repetitive inspections of front spar area previously modified. This action is prompted by several reports of cracks up to 18 inches long on airplanes on which terminating action had been

completed. This condition, if not corrected, could compromise the ultimate load capability of the wing.

DATE: Comments must be received no later than February 26, 1988.

ADDRESS: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-150-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-150-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On December 29, 1976, the FAA issued AD 74-01-01, Amendment 39-2799 (42 FR 2054; January 10, 1977), which requires inspection for cracks and repair, if necessary, of the wing front spar upper chord between stations 108 and 198. Cracking was later discovered outside of this area, and, on May 13, 1987, the FAA issued AD 87-05-52, Amendment 39-5627 (52 FR 18902; May 20, 1987), which requires inspection for cracks and repair, if necessary, of the wing front spar upper chord from the side of body to station 110 and between stations 195 and 206.

Recent service experience has disclosed cracks of up to 18 inches long on three airplanes that had incorporated the terminating action of AD 74-01-01. This cracking occurred approximately 13,000 landings after incorporation of the preventive modification. The cracking is attributed to stress corrosion resulting from stresses induced during modification. Therefore, the FAA has determined that continuing inspections are necessary for the areas inspected in accordance with AD 74-01-01 and AD 87-05-52, the area modified in accordance with AD 74-01-01, and a 19-inch segment outboard of the area required to be inspected by AD 87-05-52. This action is necessary to ensure the structural integrity of the wing structure.

The FAA has reviewed and approved Boeing Alert Service Bulletin 737-57A1081, Revision 10, dated July 16, 1987, which describes procedures for inspection and repairs for cracks in the wing front spar upper chord from front spar stations 90 to 225.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspections and repairs, as necessary, of the wing front spar upper chord, in accordance with the service bulletin previously mentioned, and would supersede AD 74-01-01 and AD 87-05-52.

It is estimated that 300 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $96,000.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 74-01-01, Amendment 39-2799 (42 FR 2054; January 10, 1977), and AD 87-05-52, Amendment 39-5627 (52 FR 18902; May 20, 1987), with the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 737 series airplanes, as listed in Boeing Alert Service Bulletin 737-57A1081, Revision 10, dated July 16, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To ensure structural integrity of the wing front spar upper chord structure, accomplish the following:

A. Within 100 landings after the effective date of this AD, unless previously accomplished within the last 900 landings, visually inspect for cracks in the forward side of the wing front spar upper chord from front spar station (FSS) 90 to FSS 225, both left and right wings, in accordance with Boeing Alert Service Bulletin 737-57A1081, Revision 10, dated July 16, 1987, or later FAA-approved revisions. Repeat these inspections at intervals not to exceed 1,000 landings.

B. Apply organic corrosion inhibitor after each inspection in accordance with Boeing Alert Service Bulletin 737-57A108a, Revision 10, dated July 16, 1987, or later FAA-approved revisions.

C. If cracks are found as a result of the inspections required by paragraph A., above, accomplish the following:

1. If cracks are less than two inches in length, stop drill prior to further flight, in accordance with Boeing Alert Service Bulletin 737-57A1081, Revision 10, dated July 16, 1987, or later FAA-approved revisions.

Thereafter, reinspect daily, using eddy current or dye penetrant inspection methods. If crack growth is observed, or prior to the accumulation of 400 hours time-in-service after stop drilling, whichever occurs first, repair in accordance with Boeing Alert Service Bulletin 737-57A1081, Revision 10, dated July 16, 1987, or later FAA-approved revisions. After repair, continue to inspect in accordance with paragraph A., above.

2. If cracks are equal to or greater than two inches in length, repair prior to further flight, in accordance with Boeing Service Bulletin 737-57A1081, Revision 10, dated July 16, 1987, or later FAA-approved revisions.

D. Installation of new and improved upper chord segment in accordance with Boeing Service Bulletin 737-57-1081, Revision 7, dated March 21, 1980, or later FAA-approved revisions, is considered terminating action for the repetitive inspections required by this AD for the structure replaced. However, the repetitive inspections required by paragraphs A. or C., above, as applicable, must continue for structure *not* replaced.

E. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 10, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-28939 Filed 12-16-87; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 87-NM-155-AD]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires structural inspection and repair, as necessary, of the forward lower cargo doorway frames. This action is prompted by reports that certain frame angles, used as an alternate repair method, are subject to cracking during installation. This action would require continued inspection and repair, as necessary, of the forward lower cargo doorway frames, in addition to the replacement of certain repair parts previously installed in accordance with the existing AD.

DATES: Comments must be received no later than February 26, 1988.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-155-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara J. Baillie, Airframe Branch, ANM-120S; telephone 431-1927. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-155-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

On June 16, 1986, the FAA issued AD 86-09-06, Amendment 39-5307 (51 FR 17324; May 12, 1986), to require the structural inspection and repair, as necessary, of the forward lower cargo doorway frames, in accordance with Boeing Service Bulletin 737-53-1051, Revision 3, dated July 12, 1985. That AD was prompted by numerous reports of cracking in both vertical frame members at the lower cargo doorway. Continued operation with undetected cracked frames could result in skin cracks and eventual rapid decompression.

Since issuance of that AD, it has been determined that the alternate repair method described in the subject service bulletin requires use of frame repair angles which are subject to cracking during installation.

The FAA has reviewed and approved Boeing Service Bulletin 737-53-1051, Revision 4, dated July 30, 1987, which describes new repair and modification kits for doorway frame cracks. The new kits contain parts made from a stainless steel alloy which is less susceptible to cracking.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD proposed which would supersede the existing AD; require inspection and repair, as necessary, of the forward lower cargo doorway frames; require reinspection of previously modified frames; and provide a terminating modification; in accordance with the service bulletin previously mentioned. The period for compliance with the initial inspection requirement, however, would remain the same as that required by the existing AD.

It is estimated that 186 airplanes of U.S. registry would be affected by this AD. (However, it is expected that only a few airplanes would require rework as a result of this action.) It would take approximately 350 hours per airplane to accomplish the required rework, the average labor cost would be $40 per hour, and parts would be $2,200. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,200 per airplane.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Boeing Model 737 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By superseding AD 86-09-06, Amendment 39-5307 (51 FR 17324; May 12, 1986), with the following new airworthiness directive:

§ 39.13 [Amended]

Boeing: Applies to Model 737 series airplanes listed in Boeing Service Bulletin 737-53-1051, Revision 4, dated July 30, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent rapid loss of cabin pressure resulting from undetected fram cracking, accomplish the following:

A. Prior to the accumulation of 6,000 landings after June 16, 1986, visually inspect the forward and aft body frames adjacent to the forward lower cargo door for cracks, in accordance with Flight Safety Inspection Program in Boeing Service Bulletin 737-53-1051, Revision 3, dated July 12, 1985, or later FAA-approved revisions. Repeat the inspections at intervals not to exceed 4,000 landings.

B. After the effective date of this AD, if cracks are found, prior to further flight, repair in accordance with Part III.A. or Part III.B., as applicable, of Boeing Service Bulletin 737-53-1051, Revision 4, dated July 30, 1987, or later FAA-approved revisions.

C. For airplanes that have had cracks repaired in accordance with Part III.A. of Boeing Service Bulletin 737-53-1051, initial release, dated June 16, 1978, or later FAA-approved revisions: Prior to the accumulation of 25,000 landings after the repair, and thereafter at intervals not to exceed 17,000 landings, visually inspect the frames for cracks in the area of the repair in accordance with Boeing Service Bulletin 737-53-1051, Revision 3, or later FAA-approved revisions. Parts found cracked must be repaired prior to further flight in accordance with an FAA-approved repair method.

D. For airplanes that have had cracks repaired in accordance with Part III.B. of Boeing Service Bulletin 737-53-1051, Revision 3: Prior to the accumulation of 3,000 landings after effective date of this AD, replace the repair parts with new airworthy repair parts in accordance with Boeing Service Bulletin 737-53-1051, Revision 4, or later FAA-approved revisions.

E. For airplanes that have had cracks repaired in accordance with the Boeing Model 737 Structural Repair Manual, Section 51-40-3, or with Part III.B. of Boeing Service Bulletin 737-53-1051, Revision 4, or later FAA-approved revisions, or in accordance with paragraph D., above: Prior to the accumulation of 6,000 landings after the repair and thereafter at intervals not to exceed 4,000 landings, visually inspect the frames for cracks in the area of the repair in accordance with Boeing Service Bulletin 737-53-1051, Revision 4, or later FAA-approved revisions. Parts found cracked must be repaired prior to further flight, in accordance with an FAA-approved repair method.

F. Modification of uncracked frames in accordance with the Preventative Modification of Boeing Service Bulletin 737-53-1051, Revision 3, dated July 12, 1985, or later FAA-approved revisions, constitutes terminating action for the requirements of this AD.

G. Airplanes with cracked frames may be flown unpressurized in accordance with FAR 21.197 and 21.199 to a maintenance base for repairs or replacement required by this AD.

H. For the purposes of complying with this AD, subject to acceptance by the assigned FAA Principal Maintenance Inspector, the number of landings may be determined by dividing each airplane's number of hours time in servive by the operator's fleet average time from takeoff to landing for the airplane type.

I. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA Northwest Mountain Region.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 10, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-28941 Filed 12-16-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 87-NM-147-AD]

Airworthiness Directives; Sud Aviation Model Caravelle SE-210 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Sud Aviation Model Caravelle SE-210 series airplanes, that would require inspections for cracking and repair, if necessary, of the wing lower skin panels adjacent to wing rib No. 31. This proposal is prompted by reports of cracking detected in the area around the ends of stiffeners K 8.5 and C 8.5. This condition, if not corrected, could lead to failure of the wing.

DATES: Comments must be received no later than February 12, 1988.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-147-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Ms. Judy Golder, Standardization Branch, ANM-113; telephone (206) 431-1967. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications

should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-147-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction General de L'Aviation Civile-France (DGAC) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of cracking detected in the area around the wing lower skinpanels adjacent to rib No. 31 at the ends of stiffeners K 8.5 and C 8.5 on Sud Aviation Model Caravelle SE-210 series airplanes. The cracking is attributed to fatigue caused by the discontinuity of load path at the end of the stringers.

There have been two reports of cracking on aircraft that has accumulated approximately 5,000 and 21,300 landings, respectively. Cracking in this area, if not detected and corrected, could lead to failure of the wing.

Sud Aviation has issued Sud Service Bulletin No. 57-56, Revision 2, dated February 28, 1985, which describes procedures to detect and repair cracking of the wing lower skin adjacent to rib No. 31. The service bulletin also describes a preventive reinforcement procedure. The DGAC has classified this service bulletin as mandatory.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require inspection of the wing lower skin adjacent to rib No. 31, and repair, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $10,240 for the initial inspection.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Sud Aviation: Applies to Caravelle Model SE-210 series airplanes, listed in Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent failure of the wing, accomplish the following:

A. Within 100 landings after the effective date of this AD or prior to the accumulation of the number of landings specified in the schedule, below, whichever occurs later, accomplish the requirements of subparagraphs A.1. or A.2, below, as applicable.

Schedule

(1) 30,000 landings on airplanes whose maximum take-off weight [1] is 48 tons or less;

(2) 20,000 landings on airplanes whose maximum take-off weight [1] exceeds 48 tons but is no more than 52 tons;

(3) 10,000 landings on airplanes whose maximum take-off weight [1] exceeds 52 tons.

1. For airplanes without external doubler, perform visual and nondestructive testing inspections (NDI) for cracking adjacent to wing rib No. 31 in accordance with Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985.

2. For airplanes with external doublers, perform visual and radiographic inspections for cracking adjacent to wing rib No. 31 in accordancce with Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985.

B. If no cracks are detected, repeat the inspections required by paragraph A., above, at the intervals specified in Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985, Figure 1, Wing Lower Surface Inspection Frequencies.

C. Any cracks detected during the inspections required by paragraphs A. or B., above, must be repaired, prior to further flight, in accordance with Sud Aviation Caravelle Service Bulletin No. 57-56, Revision 2, dated February 28, 1985.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Standardization Branch, ANM-133, FAA, Northwest Mountain Region.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Aerospatiale, 316 Rue de Bayonne, 31060 Toulouse Cedex 03, France. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 10, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-28940 Filed 12-16-87; 8:45 am]

BILLING CODE 4910-13-M

[1] Maximum take-off weight as defined in the FAA-approved airplane flight manual.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Changes to the Customs Field Organization; Chicago, IL, Cleveland, OH, Fort Wayne, IN

AGENCY: U.S. Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations by changing the boundaries of the Chicago and Cleveland Customs Districts, and by designating the newly approved Customs facility at Fort Wayne, IN, as a Customs station. This change is necessary to place the Fort Wayne facility entirely within one Customs district. The Fort Wayne station will be within the Cleveland District and be supervised by the Indianapolis, IN, port of entry. These changes are proposed as part of Customs continuing efforts to obtain more efficient use of personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

DATE: Comments must be received on or before February 16, 1988.

ADDRESS: Comments (preferably in triplicate) should be submitted to and may be inspected at the Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2324, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman or John Lenihan, Office of Workforce Effectiveness and Development (202–566–9425).

SUPPLEMENTARY INFORMATION:

Background

The Customs Service field organization currently consists of seven geographical regions further divided into districts, with ports within each district. Customs ports of entry are locations (seaports, airports, or land border ports) where Customs officers or employees are assigned to accept entries of merchandise, collect duties, clear passengers, vehicles, vessels, and aircraft, examine baggage, and enforce the Customs, and related laws.

Similar activities take place at Customs stations. However, the significant difference between ports of entry and stations is that at stations, the Federal Government is reimbursed for:

(1) The salaries and expenses of its officers or employees for services rendered in connection with the entry and clearance of vessels; and

(2) Except as otherwise provided by the Customs Regulations, the expenses (including any per diem allowed in lieu of subsistence), but not the salaries of its officers or employees, for services rendered in connection with the entry or delivery of merchandise.

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, Customs is proposing to change the boundaries of the Chicago and Cleveland Customs Districts, and designate the newly approved Customs facility at Fort Wayne, IN, as a Customs station. The change in boundaries is necessary to ensure that all of the territory serviced by the Fort Wayne facility is entirely within one Customs district.

The area to be serviced by the Fort Wayne facility currently lies within both the Chicago and Cleveland Districts. The effect of the boundary changes would be to transfer jurisdiction over the northeast corner of Indiana from the Chicago District to the Cleveland District, and thereby put the entire Fort Wayne service area into the Cleveland District. The Cleveland District already has the two closest existing ports, Dayton, OH, and Indianapolis, IN, and the Fort Wayne facility is to be operated as a Customs station under the supervision of the port director at Indianapolis. Also, Baer Field, in Fort Wayne, is scheduled to become a designated user fee airport in November 1987.

User fee airports are those which, while not qualifying for designation as an international or landing rights airport, have been approved by the Commissioner to receive the services of Customs officers for processing aircraft entering the U.S. Inasmuch as the volume of business anticipated at these airports is insufficient to justify their designation as an international or landing rights airport, the availability of Customs services is not paid for out of the Customs appropriations from the General Treasury of the U.S. Instead, the services of the Customs officers are provided on a fully reimbursable basis to be paid for by the user fee airports on behalf of the recipients of the services.

If this proposal is adopted, the list of Customs regions, districts, and ports of entry, and the list of Customs stations, as set forth in §§ 101.3(b) and 101.4(c), Customs Regulations (19 CFR 101.3(b), 101.4(c)), will be amended to reflect the change in the district boundaries and the designation of a Customs station.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 81.4) and § 103.11(b) Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2324, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

Authority

These changes are proposed uder the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by E.O. No. 10289, September 17, 1951 (3 CFR 1949–1953 Comp. Ch. II) and pursuant to authority provided by Treasury Department Order No. 101–5, dated February 17, 1987 (52 FR 6282).

Executive Order 12291 and Regulatory Flexibility Act

Because this document relates to agency organization it is not subject to E.O. 12291. Accordingly, a regulatory impact analysis and the review prescribed by that E.O. are not required. For the same reason, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Customs routinely makes adjustments to its field organization throughout the U.S. to accommodate the volume of Customs-related activity in various parts of the country. Although the proposal may have a limited effect upon some small entities in the area affected, it is not expected to be significant because adjusting the field organization in other areas has not had a significant economic impact upon a substantial number of small entities to the extent contemplated by the Act. Nor is it expected to impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Drafting Information

The principal author of this document was John Doyle, Regulations Control Branch, Office of Regulations and

Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

Proposed Amendments

It is proposed to amend §§ 101.3 and 101.4, Customs Regulations (19 CFR 101.3, 101.4), as set forth below:

PART 101—[AMENDED]

1. The authority citation for Part 101 would continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1, 66, 1202 (Gen. Hdnote. 11), 1624; Reorganizing Plan 1 of 1965; 3 CFR 1965 Supp.

§ 101.3 [Amended]

2. It is proposed to amend the list of Customs regions, districts, and ports of entry in § 101.3(b) in the following manner:

a. In the North Central Region under the column headed "Area", directly opposite "Chicago, Ill." the description would be revised to read as follows: "The State of Illinois lying north of latitude 39°N.; that part of the State of Indiana north of latitude 41°N. and west of longitude 86°W.; and the States of Iowa and Nebraska."

b. In the North Central Region, under the column headed "area", directly opposite "Cleveland, Ohio" the description would be revised to read as follows: "The States of Ohio, Kentucky; that part of the State of Indiana lying south of latitude 41°N. and east of longitude 86°W.; and the county of Erie in the State of Pennsylvania."

§ 101.4 [Amended]

3. It is proposed to amend the list of Customs stations in § 101.4(c) by inserting, in appropriate alphabetical order, in the listings for "Cleveland, Ohio." under the "District" column, "Fort Wayne, Ind." in the column headed "Customs stations", and on the same line, "Indianapolis" in the column headed "Port of entry having supervision".

William von Raab,

Commissioner of Customs.

Approved:

John P. Simpson,

Acting Assistant Secretary of the Treasury.

November 20, 1987.

[FR Doc. 87-28981 Filed 12-16-1987; 8:45 am]

BILLING CODE 4820-02-M

SELECTIVE SERVICE SYSTEM

32 CFR Parts 1636 and 1656

Selective Service Regulations

AGENCY: Selective Service System.

ACTION: Proposed rule.

SUMMARY: Procedures for the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*) are revised to assure greater fairness and effeciency in administration in the processing of registrants.

DATES: Comment Date: Written comments received on or before February 16, 1988 will be considered.

Effective date: Subject to the comments received, the amendments are proposed to become effective upon publication in the **Federal Register** of a final rule.

ADDRESS: Written comments to: Selective Service System, ATTN: General Counsel, Washington, DC 20435.

FOR FURTHER INFORMATION CONTACT: Henry N. Williams, General Counsel, Selective Service System, Washington, DC 20435, Phone (202) 724-1167.

SUPPLEMENTARY INFORMATION: These amendments to Selective Service Regulations are published pursuant to section 13(b) of the Military Selective Service Act (50 U.S.C. App. 463(b)) and Executive Order 11623. These Regulations implement the Military Selective Service Act (50 U.S.C. App. 451 et seq.).

Discussion of Proposed Regulations

The removal of 32 CFR 1636.9(c) and (d) would terminate the authority of boards to classify a registrant in Class 1-A-O even though he had requested classification in Class 1-O and the authority to grant a classification in Class 1-O to a registrant even though he requested classification in Class 1-A-O. The present provisions are superficially attractive but in application they would present such problems as to raise the issue of essential fairness to the registrants concerned. The registrant best knows his own beliefs and the proposed removal of the provisions in question would facilitate his clear presentation of those beliefs to the board. The work of the board would be simplified in that it could appraise the character of the registrant's beliefs in terms of the criteria for only one class. The ever present temptation of a board to make a compromise decision between classification in Class 1-O and Class 1-A-O would be eliminated. The removal of the present provisions would simplify and clarify the disposition of any appeal which the registrant might take from a board's decision with respect to his claim for Class 1-O or Class 1-A-O. Removal of the provisions would enable the Selective Service System to implement the provisions of section 6(j) of the Military Selective Service Act in an orderly manner, simplify classification procedures for the board and enable the registrant more clearly to present his claim based on his peculiar knowledge of his beliefs.

Section 1656.5(a)(1)(iii) would prohibit employers of alternative service workers from requiring as a condition of such employment a commitment to any political or religious belief or doctrine or membership or non-membership in a political or religious group. This language reflects the long held Selective Service policy of planning not to approve an employer to employ alternative service workers in violation of the stated prohibition.

There appears to be an erroneous assumption that arrangements for performing alternative service are merely matters for agreement between the alternative service worker and the employer. This erroneous assumption reflects a failure to recognize the role which the Director of Selective Service System has under the Military Selective Service Act, particularly section 6(j) as amended in 1971, in the administration of the alternative service program. Although registrants entitled to perform alternative service in lieu of induction may propose jobs with named employers, such employers are not required to hire registrants and the Selective Service System is not required to approve the proposals. The Director, as provided in section 6(j) of Military Selective Service Act, is required to determine whether the work that would be performed by the alternative service worker would comply with the statutory requirement. This includes an appraisal of the work that the worker would be performing and the employer for whom he would be working. Failure of an alternative service worker to comply with the appropriate regulations and orders issued pursuant thereto would subject him to criminal penalties of imprisonment for a period not to exceed five years, a fine of not more than $250,000 or both. The same criminal penalties would apply to the employers of alternative service workers.

There is no legislation which purports to authorize the employment of alternative service workers under arrangements which would be inconsistent with the proposed

regulation. The Selective Service System cannot properly adopt a policy inconsistent with the stated provisions. To do so would raise very serious constitutional issues particularly under the First Amendment to the Constitution. Furthermore, were the Selective Service System to permit an alternative service employer to require alternative service workers to commit themselves to a statement of faith or require membership or non-membership in religious or political organizations, additional administrative burdens would be placed upon the alternative service office without any compensating benefits to the System. The alternative service office would have to make additional referrals of prospective alternative service workers for employment or would have to screen perspective referees on the basis of their willingness to commit themselves to the statements of faith which alternative service employers might require. Moreover, the permitting of employers of alternative service workers to require such workers to commit themselves to statements of faith would result in substantial but inappropriate pressures upon perspective alternative service workers. Churches could use the arrangements "to keep the lads in the fold" which would violate their rights under the Freedom of Exercise Clause in the First Amendment to the Constitution of the United States. The opportunities for alternative service employment would be inappropriately restricted without any compensating benefits to the prospective alternative service worker.

There could be little serious contention that the Selective Service System should permit employers of alternative service workers to engage in practices which if engaged in by the Selective Service System would be in violation of law. The Constitution and numerous Federal statutes express a policy that prohibits discrimination on the basis of religious belief or doctrine or membership or non-membership in any political or religious group. The Selective Service System does not have the legal authority to permit the implementation of a program for which it has statutory responsibility in a manner inconsistent with well recognized Federal policy.

Assuming—but without ascertaining—that the Congress by law can permit employers of alternative service workers to discriminate on the basis of religious or political belief of prospective alternative service workers, it is beyond reasonable doubt absent such satutory authority that the Selective Service System in carrying out its responsibilities under section 6(j) of the Military Service Act can neither engage in discrimination nor permit employers to discriminate in the implementation of the alternative service program that the Selective Service System is required to administer. Unless and until statutory law authorizes practices inconsistent with the proposed regulation, the Selective Service System would be acting irresponsibly in administering a program of alternative service in a manner inconsistent with the policy reflected in the text of the regulation.

There is nothing in the decision of the United States Supreme Court in *Corporation of the presiding Bishop of the Church of Jesus Christ of Latter-Day Saints* v. *Amos*, 107 S. Ct. 2862 (1987) inconsistent with the foregoing.

Interested persons are invited to submit written comments on the proposed regulations. Reference should be made to the number of the paragraph or section to which comments are directed. All written comments received in response to this notice of proposed rulemaking will be available for public inspection in the Office of the General Counsel from 9:00 a.m. to 4:00 p.m, Monday through Friday, except legal holidays.

As required by Executive Order 12291, I have determined that this proposed rule is not a "Major" rule and therefore does not require a Regulatory Impact Analysis.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), I have determined that these regulations do not have a significant economic impact on a substantial number of small entities.

List of Subjects in 32 CFR Parts 1636 and 1656

Armed forces—draft.

Dated: November 9, 1987.

Jerry D. Jennings,

Acting Director.

The proposed regulations are:

PART 1636—CLASSIFICATION OF CONSCIENTIOUS OBJECTORS

1. The authority citation for Part 1636 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

§ 1636.9 [Amended]

2. Section 1636.9 (c) and (d) is removed and reserved.

PART 1656—ALTERNATIVE SERVICE

3. The authority citation for Part 1656 continues to read as follows:

Authority: Military Selective Service Act, 50 U.S.C. App. 451 et seq.; E.O. 11623.

4. Section 1656.5(a)(1)(iii) is revised to read:

§ 1656.5 [Amended]

(a) * * *

(1) * * *

(iii) Those who do not require as a condition of the employment of an ASW his commitment to any political or religious belief or doctrine or his membership or nonmembership in a political or religious group.

* * * * *

[FR Doc. 87–28976 Filed 12–16–87; 8:45 am]

BILLING CODE 8015-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 179

[CGD 77–115]

Defect Notification and First Purchaser Information

AGENCY: Coast Guard, DOT.

ACTION: Notice of extension of comment period.

SUMMARY: A supplementary notice of proposed rulemaking (52 FR 20115) published May 29, 1987, proposed amendments to the Defect Notification regulations in Part 179 of Title 33, Code of Federal Regulations. Public comments were invited by August 27, 1987. The notice was published in the Boating Safety Circular and distributed to approximately 21,000 recreational boat manufacturers, dealers, distributors and other interested parties. After the close of the comment period, a number of inflatable boat manufacturers and importers learned of the notice and requested copies of the notice and an opportunity to comment. Those manufacturers and importers could be adversely affected by the proposed amendments. Due to these requests, the comment period is being extended 60 days from the publication of this notice.

DATES: Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be submitted to Commandant (G–CMC/21), (CGD 77–115), U.S. Coast Guard, Washington, DC 20593–0001. Comments will be available for examination at the Marine Safety Council (G–CMC/21),

Room 2110, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, between 8 a.m. and 3 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Alston Colihan, Office of Boating, Public, and Consumer Affairs, Boating Safety Division, (202) 267–0981.

SUPPLEMENTARY INFORMATION:

Request for Comments

Interested persons are invited to submit written views, data or arguments. Comments should include the name and address of the person making them and identify this notice [CGD 77–115]. Receipt of comments will be acknowledged if a stamped, self-addressed postcard or envelope is enclosed.

All comments received will be considered before final action is taken on this proposal. Copies of all written comments received will be available for examination by interested persons at the Marine Safety Council address noted above. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

The supplemental notice of proposed rulemaking published on May 29, 1987 provided that public comments should be received by August 27, 1987. The intended effect of the amendments proposed in the supplementary notice is to require boat and engine manufacturers to establish and maintain first purchaser lists and require marine dealers to furnish the manufacturers with the information necessary to establish those lists: The serial numbers of new boats and engines sold and the names and addresses of retail first purchasers of those products. The manufacturers would use the information to locate the purchasers of boats and engines which have been recalled for defects which create a substantial risk of personal injury to the public and for failures to comply with applicable regulations. The proposed amendments are needed because many manufacturers do not maintain sufficient first purchaser lists or cannot obtain the information from dealers. As a result, attempts to notify purchasers during recall campaigns are inadequate. Additional editorial changes would clarify confusing language in the Defect Notification regulations and would reflect changes in the applicability of the part. Since the Coast Guard feels that an affected segment of the public has not had sufficient opportunity to comment on the supplementary notice of proposed rulemaking, the time for public comment is extended to February 16, 1988.

Dated: December 14, 1987.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Chief, Office of Boating, Public and Consumer Affairs.

[FR Doc. 87–28987 Filed 12–16–87; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Part 251

Formula Grants; Local Educational Agencies and Tribal Schools

AGENCY: Department of Education.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On October 5, 1987, the Department of Education published in the **Federal Register** a notice of proposed rulemaking (NPRM) concerning the documentation necessary to establish the eligibility of school children to be counted as "Indian" or "Alaska Native" under the Part A Formula Grants Program of the Indian Education Act. The NPRM provided for a comment period ending November 19, 1987 (52 FR 37260–37263).

In response to numerous requests, the Secretary extends the comment period.

DATE: The comment period for the October 5, 1987, NPRM is extended until March 16, 1988.

ADDRESSES: All comments concerning the proposed regulations should be addressed to John Sam, Acting Director, Indian Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education (Room 2177, FOB–6), 400 Maryland Avenue, SW., Washington, DC 20202. Telephone (202) 732–1887.

FOR FURTHER INFORMATION CONTACT: Hakim Khan, telephone number (202) 732–1887.

Dated: December 11, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87–29022 Filed 12–16–87; 8:45 am]

BILLING CODE 4000–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[General Docket No. 87–505; FCC 87–352]

National Security Emergency Preparedness Telecommunications Service Priority System

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend Subpart D and Appendices A and B to Part 64 of its Rules and Regulations governing (a) the system of priorities for restoration of vital private line services during emergency situations and (b) a precedence system to ensure that communications vital to the national interst will be afforded priority handling in all situations ranging from normal peacetime conditions to various stages of crises. Amendment of the rules is proposed in consideration of a petition filed by the Secretary of Defense, through the National Communications System (NCS), who contends that the Commission's Restoration Priority (RP) System no longer addresses today's needs for priority treatment of National Security Emergency Preparedness (NSEP) telecommunications service.

DATES: Interested parties may file comments on or before January 25, 1988, and reply comments on or before February 16, 1988. For general information on how to file comments, parties should direct inquiries to the Commission's Consumer Assistance and Small Business Division, telephone (202) 632–7000.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James M. Talens, Chief, Domestic Services Branch, Common Carrier Bureau, telephone (202) 634–1800.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (*NPRM*) in General Docket No. 87–505, FCC 87–352, adopted November 2, 1987, and released December 2, 1987. The complete document may be inspected and copied during the weekday hours (excluding Federal holidays) of 9 a.m. to 4:30 p.m. in the Commission's Public Reference Room, Room 239, 1919 M Street NW., Washington, DC; or a transcript may be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street,

NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Summary of Notice of Proposed Rulemaking

1. Initiation of this rulemaking is prompted by a petition filed April 1, 1987 by the Secretary of Defense in his capacity as the Executive Agent for NCS. Public Notice of the petition released by the Commission (*see* Public Notice No. 2626 (April 3, 1987)) elicited twelve comments and two reply comments. For the reasons set forth in the NPRM, the Commission proposes to (a) revise its current Rule § 64.401 and Appendix A to Rule Part 64 which contain the RP System for establishing priorities for restoring vital private line services during emergencies, and (b) delete § 64.402 and Appendix B to Rule Part 64 which dictate the Precedence System for public correspondence service provided by communications common carriers. Interested parties are encouraged to express their views of the proposed revisions and to submit specific editorial modifications to NCS' draft TSP system contained in Appendix A to the NPRM.

2. It has been suggested that the current RP System does not fully address today's needs for priority treatment of NSEP telecommunications services, and therefore should be replaced by an updated Telecommunications Service Priority (TSP) system having broader scope and applicability. The proposed TSP rules, together with regulations adopted by the Executive Office of the President, are intended to establish a uniform system of priorities for provisioning and restoration of NSEP telecommunications services both before and after invocation of the President's war emergency powers. *See* 47 U.S.C. 706.

3. The TSP system would permit communications common carriers to provide certain preferences among services and users when NSEP is involved without violating provisions of the Communications Act. The objective of the proposed system is to ensure that NSEP telecommunications needs are handled adequately without unduly interfering with those of the public, and the process is intended to modernize the means by which the nation is assured that essential communications facilities receive the highest priority in times of national emergency.

Note.—Since this Federal Register publication is only a brief summary of the *NPRM*, including Appendix A, interested parties are urged to examine the complete document which, as stated above, may be copied at the Commission's Public Reference Room or purchased from International Transcription Services).

Legal Basis

Authority for this action is contained in the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 201–05, amended.

Ex Parte Presentations

This is a nonrestricted notice and comment rulemaking proceeding. For rules governing permissible *ex parte* contacts, *see* § 1.1200, *et seq.*, of equal the Commission's Rules, 47 CFR 1.1200, *et seq.*, as amended by the Commission's *Report and Order* in Gen. Docket No. 86–225 released May 22, 1987 (FCC 87–94), 2 FCC Rcd 3011, 52 FR 21051 (June 4, 1987); *partial reconsideration pending*, 2 FCC Rcd 4264, *Erratum*, 2 FCC Rdc 4265 (1987).

Initial Regulatory Flexibility Analysis

The impact of the proposed rules on large and small telecommunications providers will vary depending on the number of NSEP services provided. Written comments are requested on the initial regulatory flexibility analysis as prescribed by the *NPRM* pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq*.

List of Subjects in 47 CFR Part 64

Communications common carriers, Priority services in emergencies, Priority system, Restoration of common carrier intercity private line service, Public correspondence service facilities.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 87–28484 Filed 12–16–87; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 52, No. 242
Thursday, December 17, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Commission on Dairy Policy; Advisory Committee Meeting

Pursuant to provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting.

Name: National Commission on Dairy Policy.

Time And Place: 8:00 A.M. at the Sheraton National Hotel Columbia Pike and Washington Blvd. Arlington, Virginia.

Status: Open.

Matters to be considered: On January 4 and 5 the Commission will review draft findings on production controls and economic formula. The Commission will also conduct a final review of draft findings on trade, promotion, family farms, technology and milk price supports. The Commission will begin the process of making recommendations for its final report. The Commission will also discuss component pricing and milk and dairy product standards.

Written statements may be filed before or after the meeting with: Contact person named below.

CONTACT PERSON FOR MORE INFORMATION: Mr. T. Jeffrey Lyon, Assistant Director, National Commission on Dairy Policy, 1401 New York Avenue NW., Suite 1100, Washington, DC 20005, (202) 638–6222.

Signed at Washington, DC, this 13th day of December 1987.

David R. Dyer,

Executive Director, National Commission on Dairy Policy.

[FR Doc. 87–28972 Filed 12–16–87; 8:45 am]

BILLING CODE 3410–05–M

Soil Conservation Service

Finding of No Significant Impact; Aucilla River Watershed, FL

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Aucilla River Watershed, Jefferson County, Florida, and Brooks and Thomas Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: James W. Mitchell, State Conservationist, Soil Conservation Service, 401 S.E. First Avenue, Room 248, Gainesville, Florida 32601, telephone (904) 377–0946.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, James W. Mitchell, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical assistance and federal cost sharing for the installation of land treatment measures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting James W. Mitchell.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials)

James W. Mitchell,

State Conservationist.

Date: December 10, 1987.

[FR Doc. 87–28936 Filed 12–16–87; 8:45 am]

BILLING CODE 3410–16–M

Finding of No Significant Impact; Hays Creek Watershed, VA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding to no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Hays Creek Watershed in Rockbridge and Augusta Counties, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. George C. Norris, State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240–9999, telephone (804) 771–2455.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. George C. Norris, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for the protection of 9,876 acres of cropland, pastureland, and forestland in Rockbridge and Augusta Counties, Virginia. This protection will be accomplished by installation of soil and water conservation practices.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various

Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single-copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. George C. Norris, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10,901, Resource Conservation and Development Program. Executive Order 12372 regarding inter-government review of federal and federally-assisted programs and projects is applicable)

George C. Norris,

State Conservationist.

Date: December 10, 1987.

[FR Doc. 87-28971 Filed 12-16-87; 8:45 am]

BILLING CODE 3410-16-M

CIVIL RIGHTS COMMISSION

Hawaii Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:00 noon, on January 21, 1988, at the Waikiki Trade Center, 2255 Kuhio Avenue, 11th Floor conference room, Honolulu, Hawaii 96815. The purpose of the meeting is to review the work of the education subcommittee and to plan for implementation of the Hawaiian Homelands project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Andre S. Tatibouet, or Philip Montez, Director of the Western Regional Division (213) 894-3437, TDD (213) 894-0508. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 4, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-28931 Filed 12-16-87; 8:45 am]

BILLING CODE 6335-01-M

Rhode Island Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 12:00 noon and adjourn at 3:00 p.m. on December 18, 1987, at the Rhode Island Human Rights Commission, 10 Abbott Park Place, Providence, RI 02903. The purpose of the meeting is (1) to discuss and approve the report "The Immigration Reform and Control Act of 1986: Civil Rights Issues in Implementing the Legalization and Employer-sanctions Programs," (2) to plan future SAC activities, and (3) to hear a presentation by the director of the Rhode Island Human Rights Commission on "Civil Rights Enforcement by the Rhode Island Human Rights Commission."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson David Sholes (401-463-5600) or John I. Binkley, Director of the Eastern Regional Division at (202) 523-5264, (TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 10, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-28932 Filed 12-16-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Information Collections Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration

Title: Application for an Export Trade Certificate of Review

Form Number: Agency—ITA-4093P; OMB—0625-0125

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 40 respondents; 1,280 reporting hours

Needs and Uses: The Export Trading Company Act is intended to increase U.S. exports of goods and services primarily by removing two impediments: (1) Restrictions on bank investment and certain export financing, and (2) the uncertainty regarding the application of U.S. antitrust laws to export activity. Title 111 of the Act requires the Department of Commerce to establish a program to evaluate applications for antitrust Export Trade Certificates of Review, and with the concurrence of the Department of Justice, issue such certificates in appropriate cases. The information contained in the application is used by the Departments of Commerce and Justice in determining if a Cetificate should be issued.

Affected Public: State or local governments; businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffen, 395-7340

Agency: International Trade Administration

Title: Format for Petition Requesting Relief Under U.S. Countervailing Duty Law

Form Number: Agency—ITA-366P; OMB—0625-0148

Type of Request: Revision of a currently approved collection

Burden: 44 respondents; 1,760 reporting hours

Needs and Uses: Under Section 702 of the Tariff Act, the Department of Commerce is required to conduct countervailing duty investigations when acceptable petitions are received from an interested party. The purpose of an investigation is to determine whether a foreign government is providing subsidies to a particular industry under investigation which provide the company(ies) producing and exporting that product to the U.S. an unfair advantage over U.S. producers. The information provided is used to determine whether a countervailing duty investigation is warranted.

Affected Public: Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: John Griffen 395–7340

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–28990 Filed 12–16–87; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: 1988 Dress Rehearsal—Reinterview Form and Reconciliation Record
Form Number: Agency—DX–806; OMB—NA
Type of Request: New
Burden: 17,037 respondents; 1,987 reporting hours
Needs and Uses: This collection is necessary to verify enumerators' work. Census reinterviewers will telephone or visit a sample of households to obtain address and household roster information and compare it to original census data to detect gross curbstoning.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Francine Picoult, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Francine Picoult, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: December 11, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–28991 Filed 12–16–87; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A588–604]

Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan

AGENCY: Notice.

SUMMARY: As a result of correction of clerical errors, the Department of Commerce (the Department) is amending its final determination in this investigation and its antidumping order and is directing the U.S. Customs Service to adjust the cash deposit rates as follows:

Manufacturer/producer exporter	Weighted-average margin % amended final
Koyo Seiko Co., Ltd.	36.21
NTN Toyo Bearing Co., Ltd.	36.53
All Others	36.52

EFFECTIVE DATE: December 17, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Binder (202–377–1779), Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTAL INFORMATION:

Background

On August 10, 1987, in accordance with section 735 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d), the Department made its final determination that imports of tapered roller bearings from Japan were being sold at less than fair value (52 FR 30700, August 17, 1987).

On September 23, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department of its determination that an industry in the United States is materialy injured by imports of tapered roller bearings from Japan. On October 6, 1987, pursuant to section 736 of the Act (19 U.S.C. 1673e), the Department published an antidumping duty order on tapered roller bearings from Japan (52 FR 37352, October 6, 1987).

After disclosure meetings were held with each respondent, Koyo Seiko Co., Ltd. ("Koyo"), an NTN Bearing Co., Ltd. ("NTN"), and the petitioner, the Timken Company, these parties submitted comments concerning possible clerical errors found. They requested that the Department correct these errors. The Department conductd a review based on these comments and made the following corrections:

Koyo

1. A correction was made on certain margin calculations to exclude movement charges in the cost of production for parts imported for further manufacture.
2. The program was changed to use the ESP offset as part of the calculation of constructed value (CV) of imported parts.
3. The program was amended to use the total constructed value for imported parts when comparing constructed value to merchandise further manufactured in the U.S.
4. The progam was corrected to properly allocate profit or loss between the imported components and value added.

NTN

1. A correction was made to the program to accurately calculate the foreign market value for certain imported components for further processing.
2. A correction was made to the program to accurately calculate certain constructed values.
3. The program was amended to make a circumstance of sale adjustment for home market credit expenses when the FMV was based on contructed value.
4. The cost test was changed to accurately handle certain packing included in the home market price.
5. The program was corrected to accurately make certain comparisons across the level of trade.
6. The program was corrected to make margin calculations for certain purchase price sales previously excluded.
7. Changes were made to the program to insure the use of accurate difference in merchandise adjustments.
8. Corrections were made to the program to include adjustments for R&D and interest expenses in calculating certain constructed values.
9. A program correction was made to include profit or loss in the calculation of value added.
10. A correction was made to the ESP program to correctly apply the adjustment for certain differences in credit.
11. Changes were made in our comparisons to accurately reflect

certain matches as described in the Such or Similar Merchandise section of the final determination notice.

Suspension of Liquidation

The final determination and antidumping duty order on tapered roller bearings from Japan are amended to incorporate the changes in the calculations as set forth above. Accordingly, the Department will advise the U.S. Customs Service to adjust the cash deposit rates, on or after the date of the publication of this notice in the **Federal Register**, as follows:

Manufacturer/producer exporter	Weighted-average margin % amended final
Koyo Seiko Co., Ltd.	36.21
NTN Toyo Bearing Co., Ltd.	36.53
All Others	36.52

Gilbert B. Kaplan,

Acting Assistant Secretary for Import Administration.

December 11, 1987.

[FR Doc. 87-29018 Filed 12-16-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Business Development Center Program; Newark, NJ

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MEDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve months is estimated at $375,800 for the project performance of June 1, 1988 to May 31, 1989. The MBDC will operate in the Newark, New Jersey Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $375,800 in Federal funds and a minimum of $66,318 in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provided management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minoity businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer than a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minoity business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: *Closing Date:* The closing date for applications is January 22, 1988. Applications must be postmarked on or before January 22, 1988.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264-3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director New York Regional Office at (212) 264-3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information copies of application kits and applicable regulations can be obtained at the above address.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

Date: December 7, 1987.

[FR Doc. 87-28957 Filed 12-16-87; 8:45 am]

BILLING CODE 3510-21-M

Minority Business Development Center Program; U.S. Virgin Islands

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first twelve months is estimated at $165,000 for the project performance of June 1, 1988 to May 31, 1989. The MBDC will operate in the U.S. Virgin Islands Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will

be at the discretion of MBDA based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATES: Closing date: The closing date for applications is January 22, 1988. Applications must be postmarked on or before January 22, 1988.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information copies of application kits and applicable regulations can be obtained at the above address.

William R. Fuller,

Deputy Regional Director, New York Regional Office.

Dated: December 7, 1987.

[FR Doc. 87–28958 Filed 12–16–87; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

December 14, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on December 18, 1987. For further information contact Kimbang Pham, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 343–6580. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the current import restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka.

Background

A CITA directive dated May 12, 1987 (52 FR 18413) established import limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the twelve-month period which began on June 1, 1987 and extends through May 31, 1988.

Under the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 10, 1983, as amended, and at the request of the Government of Sri Lanka, the restraint limits for Categories 331, 333/633, 334, 337, 338, 350, 351, 363, 442, 445/446, 631, 634, 636/836, 640 and 644 are being increased for carryover.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

Adoption by the United States of the Harmonized Commodity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be poublished in the **Federal Register.**

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

December 14, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 12, 1987 concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Sri Lanka and exported during the period which began on June 1, 1987 and extends through May 31, 1988.

Effective on December 18, 1987, the directive of May 12, 1987 is amended further to include the adjustments to the previously established restraint limits for the following categories, as provided under the terms of the bilateral agreement of May 10, 1983, as amended:[1]

Category	Adjusted restraint limit [1]
331	1,085,019 dozen.
333/633	34,121 dozen.
334	234,242 dozen.
337	119,221 dozen.
338	262,341 dozen.
350	52,947 dozen.
351	119,867 dozen.
363	7,226,670 numbers.
442	13,453 dozen.
445/446	104,343 dozen.
631	364,351 dozen pairs.
634	140,135 dozen.
636/836	160,950 dozen.
640	109,486 dozen.
644	25,885 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1987.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–28989 Filed 12–16–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on B–1B Defensive Avionics; Change in Location of Advisory Committee Meeting

SUMMARY: The meeting of the Defense Science Board Task Force on B–1B Defensive Avionics schedules for December 22–23, 1987 at the Pentagon, Arlington, Virginia as published in the **Federal Register** (Vol. 52, No. 197, Page 38000–38001, Tuesday, October 13, 1987, FR Doc. 87–23644) will be held at the

[1] The provisions of the bilateral agreement provide, in part, that: (1) Specific limits may be exceeded by designated percentages, provided an equal amount in equivalent square yards is deducted from another specific limit; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable limit; and (3) administrative arrangements and adjustments may be made to resolve minor problems arising in the implementation of the agreement.

Naval Research Laboratory, Washington, DC.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1987.

[FR Doc. 87-28977 Filed 12-16-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Defense Mapping Agency; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Defense Mapping Agency will meet in closed session on February 2-3, and March 8-9, 1988 at DMA Hydrographic/Topographic Center, Washington, DC.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will study the Defense Mapping Agency and ascertain whether or not the mechanisms exists within DMA to meet the needs of weapons systems developers and operators with respect to resources, capabilities, and procedures.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1)(1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1986.

[FR Doc. 87-28978 Filed 12-16-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Follow on Forces Attack (FOFA); Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Follow on Forces Attack (FOFA) will meet in closed session on February 8-9, 1988 in the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will continue to review, in detail, classified material associated with conventional military capabilities in NATO to include special targeting requirements.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

December 15, 1986.

[FR Doc. 87-28979 Filed 12-16-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for a Proposed Land Acquisition for Expansion of Marine Corps Base, Camp Lejeune, Onslow County, NC

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Council on Environmental Quality Guidelines (40 CFR Part 1500), the Department of the Navy (DON), U.S. Marine Corps is preparing a DEIS for the proposed expansion of Marine Corps Base, Camp Lejeune.

During development of the current Master Plan, the need for increased training area resulted in development of a separate report entitled "Special Training Analysis, Camp Lejeune, NC." This report identified a need for additional land maneuver area and live fire weapons ranges to meet current training requirements. In the late spring of 1986, the International Paper Company advised the Base Commander of a willingness to sell a large parcel adjacent to the Base.

The geographic extent of the Marine Corps Base, Camp Lejeune has remained virtually unchanged since its establishment in 1941. The Marine Corps' organization, mission, doctrine and equipment, however, have continued to evolve with technological developments. This has resulted in changes in the structure of the Corps and development of new warfare tactics. These factors, coupled with increased firepower and mobility, have created demands for additional training land that currently are being partially met by utilizing other Department of Defense, Federal and State lands for some training evolutions.

The purpose of the proposal is to provide more realistic training in modern warfare tactics.

The proposed area being considered for acquisition generally lies north of Holly Ridge and is bounded by US 17 and NC 50 on the east and west and state roads 1104, 1105, 1107, and 1119 on the north. While International Paper Company (IPC) owns most of the acreage, there are over 100 private land holdings on the periphery or within the IPC parcel that also are under consideration for potential purchase.

Major considerations of the DEIS will include evaluations of noise, wetlands impacts, land use and necessary air space restrictions for artillery weapons firing. However, a full range of environmental, social and economic issues will be evaluated including mitigation of potential adverse impacts, to include avoidance of specific impacts where possible.

Public scoping is being conducted, to identify specific elements of the DEIS evaluation process in general, and to solicit assistance from public and private entities, and individuals. Scoping was initiated on 20 November by a letter to potentially affected entities advising of the proposed action and that public scoping meetings would be held in the Jacksonville, North Carolina vicinity on Sunday, 13 December 1987 at 3:00 p.m. in the gymnasium at the Rifle Range, Building RR8, located off NC 210 between U.S. 17 and NC 172; and in Raleigh, North Carolina on Monday, 14 December 1987 at 2:00 p.m. in the auditorium of the North Carolina Department of Transportation Building. In addition, informal scoping forums may be held in January 1988, in the vicinity of Holly Ridge, Haws Run or other locations should citizen interest dictate.

The Marine Corps wishes to ensure that all interested parties have the opportunity to focus the environmental analysis. Therefore, the scoping record will remain open and comments will be received until 30 January 1988. Individuals, agencies, and public or private organizations and citizens are encouraged to support the scoping process by commenting in writing and/or participating in the scoping meetings. Input data, information, comment, and questions should be directed to: Major Stuart Wagner, USMC, Joint Public Affairs Officer, Marine Corps Base, Camp Lejeune, North Carolina 28542-5201 (919) 451-5100.

When the DEIS is completed, a public notice of its availability will be made which will request review and comment by all interested parties. A Final

Environmental Impact Statement will then be prepared to respond to the review comments.

December 11, 1987.

W.R. Babington, Jr.,

Commander, JAGS, U.S. Navy Federal Register Liaison Officer.

[FR Doc. 87-28948 Filed 12-16-87; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

[CFDA No. 84.133F]

Invitation for Applications for Research Fellowships Under the National Institute on Disability and Rehabilitation Research for Fiscal Year 1988

Purpose: Provides support directly to highly qualified individuals to conduct research on the rehabilitation of disabled persons. Individuals may propose research in any area to promote solutions to problems related to disability. NIDRR intends to award approximately eight Merit and eight Distinguished Fellowships, as described in the regulations governing this program.

Deadline for Transmittal of Applications: February 22, 1988.

Applications Available: December 18, 1987.

Available Funds: $465,000.

Estimated Range of Awards: $25,000 for Merit Fellowships; $30,000 for distinguished Fellowships; $1500 for fellowship expenses in each category.

Project Period: 12 months.

Applicable Regulations: National Institute on Disability and Rehabilitation Research Regulations, 34 CFR Part 356.

For applications or Information Contact: Louise Chappell, National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC, 20202. Telephone: (202) 732-1184; deaf and hearing impaired individuals may call (202) 732-1198 for TTY services.

Program Authority: 29 U.S.C. 761a(d).

Dated: December 14, 1987.

Madeleine Will,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 87-29023 Filed 12-16-87; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-49-NG]

Associated Natural Gas, Inc.; Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order approving blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Associated Natural Gas, Inc. (ANGI), to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 87-49-NG authorizes ANGI to import up to 36 Bcf of Canadian natural gas during a two-.year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 11, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-29008 Filed 12-16-87; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-22-NG]

Texaco Gas Marketing Inc., Order Approving Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order approving blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to Texaco Gas Marketing Inc. (TGMI) to import Canadian natural gas on a short-term basis. The order issued in ERA Docket No. 87-22-NG authorizes TGMI to import up to 73 Bcf of Canadian natural gas over a two-year term beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 11, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-29009 Filed 12-16-87; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Agency Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for clearance to the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not contain information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) Annual respondent burden, i.e., an estimate of the total number of hours needed to respond to the collection; and (12) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before January 19, 1988. Last notice issued Wednesday, December 2, 1987.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Carole Patton, Office of Statistical Standards (EI–70), Energy Information Administration, M.S. 1H/023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–2222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review were:

1. Federal Energy Regulatory Commission
2. FERC–314A
3. 1902–0006
4. Application for Small Producer Exemption
5. Extension
6. One time filing
7. Required to obtain or retain a benefit
8. Businesses or other for profit; small businesses or organizations
9. 90 respondents
10. 90 responses
11. 270 hours
12. The data collected are used by the Commission to evaluate and process independent producer applications for the sale of gas in interstate commerce under small producer certificates of public convenience and necessity as prescribed by section 7 of the Natural Gas Act.

1. Federal Energy Regulatory Commission
2. FERC–532
3. 1902–0055
4. Gas Producer Rate Filing
5. Extension
6. Annually; on occasion
7. Mandatory
8. Businesses or other for profit
9. 200 respondents
10. 1,948 responses
11. 14,667 hours
12. Information collection is mandatory to determine rates and charges received by large producers of natural gas dedicated to interstate commerce before November 9, 1978. An initial rate schedule when issuance of a certificate is requested and a notice of cancellation when abandonment is requested also are required.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974, (15 U.S.C. 764(a), 764(b), 772(b), and 790(a)).

Issued in Washington, DC, December 10, 1987.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 87–29010 Filed 12–16–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project Nos. 516–034 et al.]

Hydroelectric Applications, South Carolina Electric & Gas Co., Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Regulatory Commission and are available for public inspection:

a. *Type of Application:* Change in Land Rights.

b. *Project No.:* 516–034.

c. *Date Filed:* October 29, 1986.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda.

f. *Location:* Saluda River in Lexington County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Contact Person:* Mr. Randolph R. Mahan, Associate General Counsel, South Carolina Electric & Gas Company, Columbia, SC 29218, (803) 748–3538.

i. *FERC Contact:* Peter Lyse, (202) 376–9479.

j. *Comment Date:* January 14, 1988.

k. *Description of Application:* South Carolina Electric & Gas Company, licensee for the Saluda Project, seeks Commission authorization to dispose of approximately 72 acres of land currently located within the project boundary. The land, which is presently undeveloped, would be transferred to South Carolina Real Estate Corporation, which proposes to develop it for residential and recreational purposes. The proposed development, to be known as Bundrick Pointe, would include the construction of single and multiple family residences and condominiums, marinas, a community center and a public park. (A copy of the application may be obtained by interested parties directly from the licensee).

l. This notice also consists of the following standard paragraphs: B & C.

2 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2370–019.

c. *Date Filed:* October 14, 1986.

d. *Applicant:* Pennsylvania Electric Company.

e. *Name of Project:* Deep Creek Project.

f. *Location:* On Deep Creek near the Village of Oakland, Garrett County, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William J. Madden, Jr., Bishop, Cook, Purcell, & Reynolds, 1200 17th Street, NW., Washington, DC 20036, (202) 853–9800.

i. *FERC Contact:* Michael Dees, (202) 376–9830.

j. *Comment Date:* January 19, 1988.

k. *Description of Application:* The proposed amendment to Pennsylvania Electric Company's existing licensed Project No. 2370 would consist of authorization to issue boat docking permits in excess of the number for which the licensee is authorized by article 35 of its license for the Deep Creek Project. Authority to issue the following boat dock permits at Millhouse Manor has been requested: Expand the number of slips from the existing 14 slips to 18 slips, and provide a boat rack to accommodate 6 beachable watercraft.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. *Type of Application:* Surrender of License.

b. *Project No.:* 3435–008.

c. *Date Filed:* October 2, 1987.

d. *Applicant:* The City of Hope, Arkansas.

e. *Name of Project:* Millwood Hydroelectric Project.

f. *Location:* On the Little River in Hempstead and Little River Counties, Arkansas.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Zachary D. Wilson, Attorney at Law, 321 Maple, P.O. Box 5578, N. Little Rock, AR 72119, (501) 376–4090.

i. *FERC Contact:* Nanzo T. Coley, (202) 376–9416.

j. *Comment Date:* January 19, 1988.

k. *Description of Proposed Surrender:* (1) A 15.5-foot-diameter steel penstock, about 300 feet long, tunneled through the concrete section of the dam and a 6.5-foot-diameter steel penstock about 100 feet long, connecting to an existing outlet pipe with a steel liner; (2) a

powerhouse containing two turbine-generator units rated at 3,000 kW and 600 kW for a total rated capacity of 3,600 kW; (3) a tailrace returning flow to the river about 100 feet downstream from the dam; (4) a 115-kV transmission line, approximately 5,000 feet long; and (5) appurtenant facilities.

The applicant estimates that average annual energy output would have been 13,786,000 kWh. Energy produced at the project would have been sold to the Southwest Electric Power Company.

l. This notice also consists of the following standard paragraphs: B, C, & D2.

4 a. *Type of Application:* Minor License.

b. *Project No.:* 8945–001.

c. *Date Filed:* October 10, 1986.

d. *Applicant:* Richard D. Ely.

e. *Name of Project:* Natchaug River Project.

f. *Location:* On the Natchaug River, in the Town of Windham, Windham County and the Town of Tolland, Mansfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Richard D. Ely, P.O. Box 474, Storrs, CT 06268, (203) 486–5335.

i. *FERC Contact:* Tom Murphy, (202) 376–9829.

j. *Comment Date:* February 8, 1988.

k. *Description of project:* The proposed run-of-river project would utilize the U.S. Corps of Engineers' Mansfield Hollow Dam. The project would consist of installing two generating units along with trash racks in existing outlet conduits. The combined installed capacity will be 240 kW and the estimated average annual generation is 690 MWh. Power transmission will be by existing underground cable. The applicant estimates the cost of the project will be $187,000.

l. *Purpose of Project:* The project power generated would be sold to the Connecticut Power and Light Company.

m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. *Type of Application:* Exemption (5MW or less).

b. *Project No.:* 10466–000.

c. *Date Filed:* September 3, 1987.

d. *Applicant:* Mega Renewables.

e. *Name of Project:* Walker/Digger Hydroelectric Project.

f. *Location:* On Digger Creek, near the town of Manton, in Tehama County, California (In Sections 19, 20 and 21 of T30N, R2E, MDB&M; and Sections 23 and 24 of T30N, RIE, MDB&M).

g. *Filed Pursuant to:* Section 408 of the Federal Energy Security Act, 16 U.S.C. 2705 and 2708 *as amended.*

h. *Applicant Contact:* Fred Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding CA 96002, (916) 222–1414.

i. *FERC Contact:* Ahmad Mushtaq, (202) 376–1900.

j. *Comment Date:* January 19, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An intake structure in the west bank of Digger Creek at elevation 3,085 feet m.s.l.; (2) a 48-inch-diameter, 2-mile-long diversion conduit; (3) a 42-inch-diameter, 1.8-mile-long steel penstock; (4) a powerhouse with a total installed capacity of 3,000 kW operating under a head of 725 feet; and (5) a 2,000-foot-long, 60-kV transmission line interconnecting the project to an existing Pacific Gas and Electric Company (PG&E) transmission line. The estimated average annual generation of 9.5 million kWh would be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

6 a. *Type of Application:* Preliminary Permit.

b. *Project No:* 9977–000.

c. *Date Filed:* April 21, 1986.

d. *Applicant:* The City of Augusta, Georgia.

e. *Name of Project:* New Savannah Bluff Hydro Project.

f. *Location:* On the Savannah River in Richmond County, Georgia, and Aiken County, South Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) – 825(r).

h. *Contact Person:* Mr. Charles T. Dillard, 701 Municipal Building, Augusta, GA 30911, (404) 821–1706.

i. *FERC Contact:* Ed Lee, (202) 376–9828.

j. *Comment Date:* January 19, 1988.

k. *Competing Application:* Project No. 9812–000 Date Filed: December 30, 1985.

l. *Description of Project:* The proposed project would be located at the U.S. Army Corps of Engineers' New Savannah Bluff Lock and Dam, and would consist of: (1) A proposed 1,000-foot-long headrace canal; (2) a new powerhouse containing one 7–MW generator; (3) a proposed 1,000-foot-long tailrace; (4) a proposed 4-mile-long 13.8-kV transmission line or equivalent; and (5) appurtenant facilities. The applicant estimates that the average annual generation would be 45,000 MWh. Project energy would be sold to a local utility company. The applicant estimates that the cost of the work to be performed under the permit would be $20,000.

m. This notice also consists of the following standard paragraphs: A8, A10, B, C, and D2.

7 a. *Type of Application:* Amendment of License.

b. *Project No:* 1889–007.

c. *Date Filed:* December 26, 1985.

d. *Applicants:* Western Massachusetts Electric Company.

e. *Name of Project:* Turners Falls Project.

f. *Location:* On the Connecticut River in Franklin County, Massachusetts, Windham County, Vermont, and Cheshire County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) – 825(r).

h. *Contact Person:* Mr. J.F. Opeka, Northeast Utilities, P.O. Box 270, Hartford, CT 06141–0270, (203) 665–5000.

i. *FERC Contact:* Thomas O. Murphy on (202) 376–9829.

j. *Comment Date:* January 21, 1988.

k. *Description of Project:* The proposed expansion of the Turners Falls Project would consist of the installation of a new Unit 7 at the Cabot Station. No changes are planned to the dam, reservoir, gatehouse, or existing canal except for extending the canal forebay. The proposed changes consist of: (1) Extending the southerly end of the existing canal forebay approximately 80 feet to accommodate the new Unit 7 intake approach channel; (2) a new reinforced concrete intake located on the southeast side of the forebay; and (3) a new 175 feet by 55 feet reinforced concrete semi-outdoor type powerhouse located just south of Cabot Station and housing one vertical-shaft fixed blade propeller turbine and synchronous generator with an average capacity of 22,600 kW. The applicant estimates with the increased capacity of 22,600 kW the project output will increase by approximately 46,300,000 kWh per year.

l. This notice also consists of the following standard paragraphs: A3, A9, B, & C.

8 a. *Type of Application:* Amendment of License.

b. *Project No:* 2370–017.

c. *Date Filed:* October 14, 1987.

d. *Applicant:* Pennsylvania Electric Company.

e. *Name of Project:* Deep Creek Project.

f. *Location:* On Deep Creek near the Village of Oakland, Garrett County, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a) – 825(r).

h. *Applicant Contact:* Mr. William J. Madden, Jr., Bishop, Cook, Purcell, & Reynolds, 1200 17th Street, NW., Washington, DC 20036, (202) 853–9800.

i. *FERC Contact:* Michael Dees, (202) 376–9830.

j. *Comment Date:* January 22, 1988.

k. *Description of Project:* The proposed amendment to Pennsylvania Electric Company's existing licensed Project No. 2370 would consist of authorization to issue boat docking permits in excess of the number for which the licensee is authorized by article 35 of its license for the Deep Creek Project. Authority to issue the following boat dock permits at Alpine Village and Silver Tree Inn has been requested: Alpine Village — expand the number of slips from the existing 15 slips to 25 slips; Silver Tree Inn — expand the number of slips from the existing 10 slips to 38 slips.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

9 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2370–018.

c. *Date Filed:* October 14, 1987.

d. *Applicant:* Pennsylvania Electric Company.

e. *Name of Project:* Deep Creek Project.

f. *Location:* On Deep Creek near the Village of Oakland, Garrett County, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William J. Madden, Jr., Bishop, Cook, Purcell, & Reynolds, 1200 17th Street, NW., Washington, DC 20036, (202) 853–9800.

i. *FERC Contact:* Michael Dees, (202) 376–9830.

j. *Comment Date:* January 22, 1988.

k. *Description of Project:* The proposed amendment to Pennsylvania Electric Company's existing licensed Project No. 2370 would consist of authorization to issue boat docking permits in excess of the number for which the licensee is authorized by article 35 of its license for the Deep Creek Project. Authority to issue the following boat dock permits at Lakeforest Estates has been requested: Four single family three slip docks, one common dock facility to hold up to six boats, and one common dock facility to hold up to five boats.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

10 a. *Type of Application:* Transfer of License.

b. *Project No.:* 5130–005.

c. *Date Filed:* October 2, 1987.

d. *Applicants:* Floyd N. Bidwell and Mega Renewables.

e. *Name of Project:* Lost Creek #2.

f. *Location:* On Lost Creek partly within the Lassen National Forest in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Transferor: Floyd N. Bidwell, P.O. Box 547, Cassell, CA 96019, (916) 335–2797.

Transferee: Fred G. Castagna, Mega Renewables, 2576 Hartnell Avenue, Redding, CA 96002, (916) 222–1414.

i. *FERC Contact:* Don Wilt, (202) 376–9807.

j. *Comment Date:* January 22, 1988.

k. *Description of Proposed Transfer of License:* Floyd N. Bidwell proposes to transfer the license for Project No. 5130 to Mega Renewables to facilitate financing for completion of the project. Transferee has proposed to construct, operate, and utilize the full output of the project in accordance with the license.

Mega Renewables is a general partnership organized under the laws of the State of California.

l. This notice also consists of the following standard paragraphs: B and C.

11 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10203–000.

c. *Date Filed:* December 8, 1986.

d. *Applicant:* Mahoning Hydro Associates.

e. *Name of Project:* Mahoning Creek.

f. *Location:* On Mahoning Creek near Putneyville, Armstrong County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contract:* Mr. David M. Coombe, Synergics, Inc., Suite 313, Annapolis, MD 21403, (301) 268–8820.

i. *FERC Contact:* Michael Dees, (202) 376–9830.

j. *Comment Date:* January 19, 1988.

k. *Competing Application:* Project No. 10169–000.

Date Filed: November 17, 1986.

Competition Due Date: January 13, 1988.

l. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Mahoning Creek Dam and reservoir and would consist of: (1) A proposed penstock 12 feet in diameter and 1,070 feet long; (2) a proposed reinforced concrete powerhouse 50 feet by 50 feet housing two 2,500-kW hydropower units; (3) a proposed tailrace 150 feet wide and 40 feet long; (4) a proposed 34.5-kV transmission line six miles long; and (5) appurtenant facilities. The estimated annual energy production is 16 GWh. Project power would be sold to Pennsylvania Electric Company. Applicant estimates that the cost of the work to be performed under the preliminary permit would be $50,000.

m. This notice also consist of the following standard paragraphs: A8, A10, B, C, and D2.

12 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10456–000.

c. *Date Filed:* August 12, 1987.

d. *Applicant:* Sugar Pine Hydro Limited.

e. *Name of Project:* Sugar Pine Hydroelectric Project.

f. *Location:* On Deer Creek, near the town of Nevada City, in Nevada County, California. (In Sections 9, 10 and 11 of T16N, R9E, MDB&M.)

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Dr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, CA 95814, (916) 447–1423.

i. *FERC Contact:* Ahmad Mushtaq, (202) 376–1900.

j. *Comment Date:* February 16, 1988.

k. *Description of Project:* The proposed project would consist of: (1) The Nevada Irrigation District's existing 92-foot-high, 325-foot-long dam; (2) an existing reservoir with a gross storage capacity of 1,400 acre-feet and surface area of 76 acres at elevation 2,896 feet m.s.l.; (3) an 36-inch-diameter diversion slide-gate structure at elevation 2,886 feet; (4) a 7,000-foot-long, 24-inch-diameter penstock; (5) a powerhouse with a total installed capacity of 600 kW operating under a head of 260 feet; and (6) a 0.4-mile-long, 12.5-kV transmission line interconnecting with an existing Pacific Gas and Electric Company (PG&E) transmission line. The applicant estimated average annual energy generation of 2.7 GWh will be sold to PG&E.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10461–000.

c. *Date Filed:* August 31, 1987.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Parishville Water Power Project.

f. *Location:* On the West Branch of the St. Regis River, in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John H. Terry, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 428–6366.

i. *FERC Contact:* Thomas O. Murphy, (202) 376–9829.

j. *Comment Date:* February 16, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam with an overall length of approximately 153 feet and a maximum height of 19 feet; (2) an approximately 2,561-foot-long, 6-foot-diameter riveted steel penstock; (3) an approximately 186-foot-long, 10-foot-diameter riveted steel penstock; (4) an operating 2,300 kW generating unit in an existing powerhouse; (5) an existing 70-acre reservoir at the spillway crest elevation of 884.5 feet msl; (6) an existing 400-foot-long, 45-foot-wide tailrace; and (7) appurtenant facilities.

The applicant owns all project facilities necessary for the operation of the project. The applicant proposes to study the feasibility of increasing the installed generating capacity in order to use the power to serve its customers needs. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 104162–000.

c. *Date Filed:* August 31, 1987.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* Allens Falls Water Power Project.

f. *Location:* On the West Branch of the St. Regis River, in St. Lawrence County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John H. Terry, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 428–6366.

i. *FERC Contact:* Thomas O. Murphy, (202) 376–9829.

j. *Comment Date:* February 16, 1988.

k. *Description of Project:* The proposed project would consist of: (1) An existing dam with an overall length of approximately 768 feet and a maximum height of 42 feet; (2) two-foot-high flashboards on the crest of the main spillway; (3) an approximately 10,230-foot-long, 7-foot-diameter riveted steel penstock; (4) an operating 4,200 kW generating unit in an existing powerhouse; (5) an existing 108-acre reservoir at the spillway crest elevation of 740.0 feet msl (without flashboards); (6) an existing 450-foot-long tailrace varying in widths between 40 and 60 feet; (7) an existing 2.35-mile-long, 115-kV transmission line; and (8) appurtenant facilities.

The applicant owns all project facilities necessary for the operation of the project. The applicant proposes to study the feasibility of increasing the installed generating capacity in order to use the power to serve its customers needs. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $100,000.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10471–000.

c. *Date Filed:* September 8, 1987.

d. *Applicant:* Westpac Utilities.

e. *Name of Project:* Dog Creek Dam Water Power Project.

f. *Location:* On Deer Creek, near the town of Nevada City, in Sierra County, California. (In Sections 24 and 25 of T2ON, R17E, MDB&M and in Sections 30 and 31 of T2ON, R18E, MDB&M.).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jack L. Byrom, Westpac Utilities, P.O. Box 30028, Reno, NV 89520–3028, (702) 689–3299.

i. *FERC Contact:* Ahmad Mushtaq, (202) 376–1900.

j. *Comment Date:* February 17, 1987.

k. *Description of Project:* The proposed project would consist of: (1) A 130-foot-high, 585-foot-long dam, with a gross storage capacity of 15,600 acre-feet and surface area of 370 acres at elevation 5,790 feet m.s.l.; (2) a 54-inch-diameter, 600-foot-long steel penstock; (3) a powerhouse to contain a generating unit with a rated capacity of 1,500 kW operating under a head of 130 feet; and (4) a 6,200-foot-long, 25-kV transmission line interconnecting with an existing Sierra Pacific Power Company (SPPC) transmission line. The applicant estimated average annual energy generation of 0.75 GWh will be sold to SPPC.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

16 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10498–000.

c. *Date Filed:* November 2, 1987.

d. *Applicant:* Upper Falls Hydro Associates.

e. *Name of Project:* Upper Falls Hydro Project.

f. *Location:* On Provo River in Utah County, Utah: Section 34, T5S, R2E: SLB&M.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael J. Graham, P.O. Box N, Manti, UT 84642.

i. *FERC Contact:* Jesse W. Short,(202) 376–9818.

j. *Comment Date:* February 16, 1987.

k. *Description of Project:* The proposed project would be located on private property and would consist of: (1) An existing 5- x 12-foot cutoff wall at a natural spring at elevation 5,400 feet m.s.l.; (2) an existing intake and cast iron pipe, 8 inches in diameter and 900 feet long; (3) a new powerhouse with an installed capacity of 100 kW under a 300 foot head; (4) a 150-foot-long tailrace to the Provo River; (5) a 12.47-kV transmission line, about 400 feet long; and (6) appurtenant facilities. The applicant estimates the average annual energy output to be 515,165 kWh. The applicant estimates the cost of studies to be $42.500.

l. *Purpose on Project:* Project energy would be sold to the local power company or to local municipalities.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

17 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10499–000.

c. *Date Filed:* November 2, 1987.

d. *Applicant:* Rocky Ford Hydro Associates.

e. *Name of Project:* Rocky Ford Hydro Project.

f. *Location:* On Sevier River in Sevier County, Utah: Sections 19, 30, 31, T22S, R1W; Sections 24, 25, 36, T22S, R2W; SLB&M.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Michael J. Grahan, P.O. Box N, Manti, UT 84642.

i. *FERC Contact:* Jesse W. Short, (202) 376–9818.

j. *Comment Date:* February 16, 1987.

k. *Description of Project:* The proposed project would be located on private property and Bureau of Land Management land and would consist of: (1) An existing 25-foot-high earthfill dam at elevation 5, 215 feet m.s.l.; (2) an existing reservior; (3) a new penstock, 60 inches in diameter and about 100 feet long; (4) a new powerhouse with an installed capacity of 150 kW under a 14 foot head; (5) a tailrance returning flow to the river a short distance downstream from the dam; (6) a 12.47 kV transmission line, about 2,000 feet long; and (7) appurtenant facilities. The applicant estimates the average annual energy output to be 885,063 kWh. The applicant estimates the cost of studies to be $15,000.

l. *Purpose on Project:* Project energy would be sold to local municipalities or to the local power company.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30 (b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application, or notice of intent to file a competing preliminary permit or development application, must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice.

A competing license application must conform with 18 CFR 4.30(b) (10) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Mr. William C. Wakefield II, Acting Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203–RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. *Agency Comments*—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 825/(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also

be set to the Applicant's representatives.

D2. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments that they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. *Agency Comments*—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: December 14, 1987.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29017 Filed 12-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-134-002]

ANR Pipeline Co.; Compliance Filing

December 14, 1987.

Take notice that on December 4, 1987, ANR Pipeline Company ("ANR") tendered for filing to the Federal Energy Regulatory Commission ("Commission") proposed changes in Original Volume Nos. 1, 1-A and 2 of its F.E.R.C. Gas Tariff to become effective October 1, 1987. ANR states that the filing reflects compliance with the Commission's Order No. 472-B and its Order issued November 19, 1987 in Docket No. RP87-134-001. ANR further states that this filing completes the requirements established by the Commission in order to include an Annual Charges Adjustment Clause ("ACA") in its F.E.R.C. Gas Tariff.

The revised tariff sheets submitted with this filing are listed below:

Original Volume No. 1

Second Substitute Twelfth Revised Sheet No. 18
Substitute Second Revised Sheet No. 85
Substitute Original Sheet No. 86

Original Volume No. 1-A

Substitute Second Revised Sheet No. 16
First Revised Sheet No. 17
Substitute Second Revised Sheet No. 38
Substitute First Revised Sheet No. 58

Original Volume No. 2

Substitute Second Revised Sheet No. 16
Substitute Second Revised Sheet No. 17
Substitute Second Revised Sheet No. 18
Substitute Second Revised Sheet No. 19
Substitute Third Revised Sheet No. 20
Substitute Third Revised Sheet No. 21

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any party wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29011 Filed 12-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-106-009]

Arkla Energy Resources, a Division of Arkla, Inc., Change in FERC GAS Tariff

December 14, 1987.

Take notice that Arkla Energy Resources (AER) on December 7, 1987 tendered for filing the following sheets to its FERC Gas Tariff:

Original Volume No. 1-A

Second Revised Sheet Nos. 1 through 4
Third Revised Sheet Nos. 5 and 6
Second Revised Sheet Nos. 7 through 116

AER states that such sheets are filed in compliance with Ordering Paragraph B of the Commission's Order dated June 26, 1987 in this docket. Such order required AER to file revised sheets within 30 days of any order on rehearing to revise AER's tariff to reflect the conditions imposed by the Commission on its approval of AER's offer of settlement in this proceeding. The Commission denied petitions for rehearing of the June 26, 1987 order by an order dated November 5, 1987. AER proposes an effective date of January 1, 1988 for these sheets.

Any person desiring to be heard or to protest AER's filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and available for public inspection.

Lois Cashell,

Acting Secretary.

[FR Doc. 87-29012 Filed 12-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP71-15-024 et al.]

East Tennessee Natural Gas Company et al.; Filing of Pipeline Refund Reports

December 14, 1987.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before January 4, 1988. Copies of the respective filings are on file with the Commission and available for public inspection.

Lois D. Cashell,

Acting Secretary.

Appendix

Filing date	Company	Docket No.
9/25/87	East Tennessee Natural Gas Co.	RP71-15-024
9/30/87	Transwestern Pipeline Co	RP84-88-004
10/8/87	Natural Gas Pipeline Company of America.	RP85-99-007
10/8/87	Sea Robin Pipeline Co	RP85-89-006
10/8/87	United Gas Pipe Line Co	RP85-90-007
10/30/87	Colorado Interstate Gas Co.	RP72-122-020
11/2/87	Tennessee Gas Pipeline Co.	TA82-2-9-021
11/3/87	Lone Star Gathering Co	RP85-76-004
11/5/87	Valero Interstate Transmission Co.	RP85-86-003
11/10/87	Arkla Energy Resources	RP85-119-006
11/16/87	Tennessee Gas Pipeline Co.	CP79-477-003
11/19/87	Eastern Shore Natural Gas Co.	TA87-2-23-007

[FR Doc. 87-29013 Filed 12-16-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-51-002 and TA88-3-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

December 14, 1987.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on December 7, 1987, tendered for filing Substitute Ninth Revised Sheet Nos. 57(i) and 57(ii) and Tenth Revised Sheet Nos. 57(i) and 57(ii) to its FERC Gas Tariff, First Revised Volume No. 1 which were proposed to be effective November 1, 1987 and January 1, 1988, respectively.

Great Lakes states that Substitute Ninth Revised Sheet Nos. 57(i) and 57(ii) reflect changes, which are effective November 1, 1987, in the price of gas purchased by Great Lakes from TransCanada Pipelines Limited ("TransCanada") for resale to Michigan Consolidated Gas Company, ANR Pipeline Company, Natural Gas Pipeline Company of America ("Natural") and Northern Minnesota Utilities. These price changes are the result of direct negotiations between these resale customers and TransCanada.

Great Lakes states that in addition, as the result of negotiations between Great Lakes and TransCanada, the price of natural gas purchased by Great Lakes for company use was reduced from $2.19810 per MMBtu to $2.03 per MMBtu.

Further, Grrat Lakes states that there were also included on these tariff sheets minor adjustments to other customers resulting from changes in the heat content of the gas purchased and updated allocation factors for distributing company use gas cost to the various Gas Purchase Contract Groups.

Great Lakes states that the purchased gas cost changes that were reflected on the above-mentioned tariff sheets were not available when Great Lakes filed its semi-annual surcharge adjustments on September 30, 1987. Those surcharge rates were approved by the Commission on October 29, 1987, subject to refund, and, except for Natural, were accordingly reflected on the tariff sheets tendered for filing. The surcharge rate for Natural was revised to reflect the level of volumes Natural indicated that it expects to purchase from Great Lakes as a result of the gas prices that will be in effect for the period commencing November 1, 1987 and ending April 30, 1988.

Great Lakes states that Tenth Revised Sheet Nos. 57(i) and 57(ii) were filed to reflect, in the appropriate sales rate schedules, the revised Gas Research Institute's 1988 Research and Development Program pursuant to the Commission's Opinion No. 283, issued on September 29, 1987. These tariff sheets were proposed to become effective January 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29014 Filed 12-16-87; 8:45 am]

BILING CODE 6717-01-M

[Docket No. RP88-30-000]

Interstate Power Co.; Filing

December 14, 1987.

Take notice that Interstate Power Company (Company) tendered for filing on December 7, 1987, the tariff sheets listed below:

First Revised Volume No. 2

Second Revised Sheet No. 2
Original Sheet No. 9C
First Revised Sheet No. 10
Original Sheet No. 18

First Revised Volume No. 2

Third Revised Sheet No. 2
First Revised Sheet No. 3
First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 9
First Revised Sheet No. 9A
Original Sheet No. 19

Interstate Power states that the first group of First Revised Volume No. 2 sheets reduce the monthly demand charge in Interstate Power's gas transportation tariffs, to reflect the reduction in federal corporate income tax level under the Tax Reform Act of 1986.

Interstate Power submits the second group of First Revised Volume No. 2 sheets to include a new GT-1 gas transportation contract, and as a proposed tariff to provide a mechanism for Interstate to recover the annual charges assessed by the Commission—pursuant to Part 382 of the Commission's regulations. The proposed (ACA) clause is pursuant to the Commission's regulations promulgated in Order No. 472.

Any person desiring to be heard or to protest said filing should file a motion to

intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 21, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29015 Filed 12-16-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of proposed implementation of special refund procedures and solicitation of comments.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in disbursing $183,667,955.78 (plus accrued interest) obtained by the DOE under the terms of a consent order entered into with Shell Oil Company. The funds are being held in escrow following the settlement of claims and disputes arising from an Economic Regulatory Administration audit of Shell, a major integrated refiner marketing crude oil and refined petroleum products throughout the United States.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Comments should be filed in duplicate and display a conspicuous reference to Case Number KEF-0093.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director or Jonathan Rees, Staff Analyst Office of Hearings and Appeals 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-2094 (Mann), (202) 586-2383 (Rees).

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order tentatively establishes procedures to distribute to eligible claimants $183,667,955.78, plus accrued interest, obtained by the DOE under the terms of a consent order entered into with Shell Oil Company on March 26, 1987. The funds were paid by Shell towards the settlement of possible violations of the DOE price and allocation regulations relating to transactions by Shell involving the production, refining, and marketing of crude oil and petroleum products during the period January 1, 1973 through January 27, 1981 (the consent order period).

The Proposed Decision and Order sets forth the procedures and standards that the DOE has tentatively formulated to distribute the contents of the escrow account funded by Shell. The DOE has tentatively decided that the Shell consent order fund will be divided into two pools. The first pool, consisting of $163,260,405.14 (plus accrued interest), will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy, 51 FR 27899 (August 4, 1986), under which crude oil overcharge revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined petroleum products. The remaining funds, $20,407,550.64 (plus accrued interest), will be made available to qualified purchasers of Shell refined petroleum products who file Applications for Refund. However, Applications for Refund should *not* be filed at this time. Appropriate public notice will be provided prior to the acceptance of claims.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the **Federal Register** and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1:00 p.m. and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Date: December 10, 1987.

George B. Breznay,

Director, Office of Hearings and Appeals.

December 10, 1987.

Poposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Shell Oil Company.

Date of Filing: April 29, 1987.

Case Number: KEF-0093.

Under the procedural regualtions of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's Regulations. *See* 10 CFR Part 205, Subpart V. Pursuant to the provisions of Subpart V, on April 29, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Shell Oil Company under the terms of a March 26, 1987 consent order with Shell. In its Petition, the ERA requests that the OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Shell consent order.

I. Background

Shell is a major integrated refiner which produced and sold crude oil and a full range of refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the course of controls, the ERA conducted an extensive audit of Shell's operations and, as a result of the audit, alleged that Shell had violated certain applicable DOE price and allocation regulations in its sales of crude oil and petroleum products. Settlement discussions were held, and on March 26, 1987, the ERA and Shell finalized a consent order (Consent Order No. RSHA00001Z) that resolved issues pertaining to Shell's crude oil and refined petroleum product operations during the period January 1, 1973 through January 27, 1981 (the consent order period). Pursuant to the terms of the consent order, Shell remitted to total of $183,667,955.78 (the consent order fund) [1] to the DOE for distribution

[1] This amount consists of the principal consent order amount of $180,000,000 plus $3,667,955.78 in interest which accrued prior to Shell's payment to the DOE. For accounting purposes the interest

Continued

through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury pending a determination regarding their proper distribution. With interest, the amount in the Shell consent order escrow account had grown to $190,212,837.34 as of November 30, 1987.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's Petition that we implement a Subpart V proceeding with respect to the Shell consent order fund and have determined that such a proceeding is appropriate. We will grant the ERA's request. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

III. Proposed Refund Procedures

Because the consent order resolves alleged violations involving both sales of crude oil and refined petroleum products, we propose to divide the consent order fund into two pools. *See Standard Oil Co. (Indiana)*, 10 DOE ¶85,048 (1982) (*Amoco*). The consent order identifies $160 million as being attributable to alleged crude oil violations and $20 million as being attributable to Shell's sales of refined petroleum products. 52 FR. 9695 (March 26, 1987). We therefore propose that $20,407,550.64 ($20 million plus the interest on that amount remitted by Shell) contained in the Shell escrow account, plus interest accrued on that amount, be made available for distribution to purchasers of Shell refined petroleum products who demonstrate that they were injured as a result of Shell's alleged regulatory violations. We further propose that the remaining $163,260,405.14, plus accrued interest, attributable to alleged crude oil violation amounts, be made available for disbursement under the applicable DOE policy and procedures which are discussed below.

remitted by Shell shall be considered as additional principal and shall be divided proportionately between the curde oil and refined product pools discussed below.

A. Crude Oil Claims

We propose that the funds in the crude oil pool be distributed in accordance with the Modified Statement of Restitutionary Policy (MSRP) which was issued by the DOE on July 28, 1986. 51 F.R. 27899 (August 4, 1986).[2] The MSRP, which was issued as a result of a court-approved Final Settlement Agreement in *In re the Department of Energy Stripper Well Exemption Litigation*, 653 F. Supp. 108 (D. Kan. 1986),[3] provides that crude oil overcharge revenues will be divided among the States, the United States Treasury, and eligible purchasers of crude oil and refined products. Under the MSRP, up to 20 percent of these crude oil overcharge funds will be reserved to satisfy valid claims by eligible purchasers of crude oil and refined petroleum products. Remaining funds are to be disbursed to the state and federal governments for indirect restitution also in accordance with the MSRP. In the present case, we have decided to reserve the full 20 percent, or $32,652,081.02 of the crude oil pool, plus an appropriate share of the accrued interest, for direct refunds to purchasers of crude oil and refined petroleum products who prove that they were injured by these alleged crude oil violations.[4]

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *See Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986).

As in non-crude oil cases, applicants will be required to document their purchase volumes and to prove that they were injured as a result of the alleged violations. We propose to utilize standards for the showing of injury which the OHA has developed in analyzing non-crude oil claims. *See, e.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 (1986). These standards include a presumption that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry absorbed the increased costs resulting from a consent order firm's alleged overcharges. *See A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987). Reseller and retailer claimants must submit detailed evidence of injury, but may not rely upon the presumptions of injury utilized in refund cases involving refined petroleum products. *Id.* They can, however, use econometric evidence of the type employed in the OHA Report in *In Re: The Department of Energy Stripper Well Exemption Litigation*, 6 Fed. Energy Guidelines ¶ 90,507.

Refunds to eligible claimants will be calculated on the basis of a volumetric refund amount derived by dividing the funds available in the crude oil pool ($163,250,405.14 of Shell principal plus funds in all other cruide oil subaccounts) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). The crude oil volumetric refund amount in this proceeding is $.000080782098. In addition, after all valid claims are paid, unclaimed funds from the 20 percent claims reserve will be divided equally between federal and state governments. The federal government's share of the unclaimed funds will ultimately be deposited into the general fund of the Treasury of the United States.

We propose that the remaining 80 percent of the crude oil pool, or $130,608,324,12, be disbursed along with interest accrued on this amount in equal shares to the federal and state governments for indirect restitution. *See Stripper Well Exemption Litigation*, 16 DOE ¶ 85,200 at 88,386 (1987). If this proposal is adopted, we will direct the DOE's Office of the Controller to segregate this amount and distribute $65,304,162.06 in principal, plus appropriate interest, to the states and the same amount to the federal government. Refunds to the States will be in proportion to the consumption of petroleum products in each state during the period of price controls. The share (ratio) of the funds in the account which each state will receive if these procedures are adopted is contained in Exhibit H of the Settlement Agreement. These funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by

[2] In the Order implementing the MSRP, the OHA solicited comments and objections regarding the proper application of the MSRP to OHA refund proceedings involving alleged crude oil violations. On April 6, 1987, the OHA issued a notice which analyzes the comments that were submitted and explains the procedures which the Office will follow in processing applications filed under the Subpart V regulations for refunds from the crude oil overcharge funds. 52 F.R. 11737 (April 10, 1987).

[3] The Settlement Agreement resolves a number of matters, including the distribution of funds collected by the Court and the distribution of alleged crude oil violation amounts collected by the DOE in other cases.

[4] Under the Settlement Agreement, firms which apply for a portion of the Stripper Well funds generally must sign a waiver releasing their claims to any crude oil funds to be distributed by the OHA under Subpart V. Settlement Agreement, Part III. Accordingly, those firms that have executed a waiver will not be eligible for a refund from the Shell crude oil pool.

the states under the Settlement Agreement.

B. Refined Product Claims

With regard to the remainder of the Shell settlement fund, $20,407,550.64 in principal plus interest accrued on that amount, we propose to implement a two-stage refund process by which firms and individuals who purchased Shell refined petroleum products during the consent order period may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of Shell refined product purchasers: (i) End-users, i.e., ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) retailers, resellers, and refiners that resold Shell products.

In order to receive a refund, each claimant will be required to submit a schedule of its monthly purchases of Shell refined petroleum products during the consent order period. If the product was not purchased directly from Shell, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Shell.

In addition, a refiner, reseller, or retailer claimant, except those who choose to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[5] Second, because a showing of banks alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Shell. *Id.; see also Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Shupbach and Streitmatter Gas Company*, 14 DOE ¶ 85,186 (1986).

[5] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090 at 88,179 (1987).

1. Presumptions for Claims Based Upon Refined Product Purchases

Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense, and ensure that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Company*, 14 DOE ¶ 85,269 (1986) *(Marathon)*. Presumptions in refund cases are specifically authorized by the applicable DOE procedural regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally among all of Shell's sales of refined petroleum products during the consent order period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund approach is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's allocable share of the refined product pool is equal to the number of gallons purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the Shell consent order fund).[6] In the present case, the per gallon refund amount is $0.000226. We derived this figure by dividing the consent order funds in the refined product refund pool ($20,407,550.64) by the approximate number of gallons of refined products subject to price and allocation controls sold by Shell during the consent order period (90,334,236,000 gallons). As in previous cases, we will establish a minimum refund amount of $15.00. We have found through our experience that the cost of processing claims in which refunds for amounts less than $15.00 are sought outweighs the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).

In addition to the volumetric presumption, we also propose to adopt a number of presumptions regarding injury for claimants in each category listed below.

[6] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation on the basis of a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g.*, Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE ¶ 85,015 (1984).

a. *End-users.* In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Shell petroleum products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) *(TOGCO)*. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *Id.* We therefore propose that end-users of Shell refined petroleum products need only document their purchase volumes from Shell during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, needs only to submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members.[7] However, a regulated firm or cooperative will also be required to cerfity that it will pass through any refund received to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). This latter requirement is based upon the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers through the operation of automatic adjustment mechanisms. Similarly, any refunds received would be passed through to its customers. With respect to a cooperative, in general, the cooperative agreements which control prices would ensure that the alleged overcharges and, similarly, refunds would be passed through to its member-

[7] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See* Marathon, 14 DOE at 88,515

customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.

c. *Refiners, Resellers, and Retailers Seeking Refunds of $5,000 or Less.* We propose to adopt a presumption that a firm who resold Shell products and requests a small refund was injured by the alleged regulatory violations. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest (i.e. who purchased less than 22,123,894 gallons of Shell refined petroleum products during the consent order period), will not be required to submit evidence of injury beyond documentation of the volume of Shell covered products it purchased during the consent order period. *See TOGCO.* As we have noted in numerous prior proceedings, there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; in some cases, that expense might possibly exceed the expected refund. Consequently, failure to allow simplified application procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable in that it allows the OHA to process the large number of routine refund claims expected in an efficient manner.[8]

d. *Medium-Range Refiner, Reseller and Retailer Claimants.* In Lieu of making a detailed showing of injury, a refiner, reseller, or retalier claimant whose allocable share exceeds $5,000 may elect to receive as its refund the larger of $5,000 or 40 percent of its allocable share up to $50,000.[9] The use of this presumption reflects our conviction that these larger claimants were likely to have experienced some injury as a result of the alleged overcharges. *See Marathon*, 14 DOE at 88,515. In a number of prior special refund proceedings, we performed detailed economic analysis in order to determine product-specific levels of injury. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, in *Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987) we determined that it was most efficient to adopt a single general presumptive level of injury of 40 percent for all medium-range claimants, regardless of the refined products they purchased, based upon the results of our analyses in prior proceedings. We therefore propose to adopt the 40 percent presumptive level of injury for all medium-range claimants in this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Shell refined petroleum products during the consent order period in order to be eligible to receive a refund of 40 percent of its total volumetric share.[10]

e. *Sport Purchasers.* We propose to adopt a rebuttable presumption that a refiner, reseller or retailer that made only spot purchases from Shell did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers tend to have considerable discretion as to the timing and market in which to make purchases and therefore would not have made sport market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Shell.[11]

f. *Consignees.* A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). As in previous Decisions, we propose to adopt the rebuttable presumption that consignees of Shell refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Company*, 16 DOE ¶ 85,147 (1987). However, we also propose that a consignee may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices." *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. Allocation Claims

We also recognize that we may receive claims based upon Shell's alleged failure to furnish petroleum products that it was obliged to supply to the claimant under the DOE allocation regulations. *See* 10 CFR Part 211. We will evaluate refund applications based upon allocation claims by referring to the standards set forth in Decisions such as *Amoco*, 10 DOE at 88,220 and *OKC Corp./Town & Country Markets, Inc.* 12 DOE ¶ 85,094 (1984). Under those standards an allocation claimant first must demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. Secondly, it should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, it must establish that it was injured and document the extent of the injury.

C. Distribution of Product Funds Remaining after First Stage

We propose that any refined product funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, sections 3003(c) and (d). The Secretary has delegated these responsibilities to the OHA, and any refined product pool funds in the Shell consent order escrow

[8] Claimants who attempt to make a detailed showing of injury in order to support a large refund claim but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to a $5,000 small claims threshold refund. *See* Union Texas Petroleum Corp./Arrow Enterprises, Inc., 15 DOE ¶ 85,087 (1986); Quaker State Oil Refining Corp./Campbell Oil Co., 15 DOE ¶ 85,089 (1986).

[9] That is, claimants who purchased between 22,123,894 gallons and 553,097,345 gallons of Shell refined petroleum products during the consent order period (medium-range claimants) may elect to utilize this presumption. Claimants who purchased more than 553,097,345 gallons may elect to limit their claim to $50,000.

[10] A medium-range claimant may elect not to receive a refund based upon this presumption and may instead attempt to show that it is eligible for a refund equal to its full allocable share by making a detailed showing of injury using the general criteria set forth above. However, as with the small claims presumption, the 40 percent presumption will not be available to medium-range claimants who submit a detailed injury showing which leads us to conclude that they are eligible for a refund of less than 40 percent of their volumetric share. *See* n.8 infra.

[11] In prior proceedings we have stated that refunds will be approved or sport purchasers who demonstrate that (i) they made the sport purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See* Quaker State Oil Refining Corp./Certified Gasoline Co., 14 DOE ¶ 85,465 (1986).

account that the OHA determines will not be needed to effect direct restitution to injured Shell customers will be distributed in accordance with the provisions of PODRA.

IV. Application for Refund

Applications for Refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the Shell consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register.**

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Shell Oil Company pursuant to Consent Order No. RSHA00001Z, finalized on March 26, 1987, will be distributed in accordance with the foregoing Decision.

[FR Doc. 87-28962 Filed 12-16-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3302-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.)* requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget (OMB) for review. The ICR describes the nature of the solicitation and the expected impact, and where appropriate includes the actual data collection instrument. The following ICR is available for review and comment.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740 (FTS 382-2740).

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Survey of Pesticides in Drinking Water Wells. (EPA ICR #1191).

Abstract: EPA is analyzing water samples for pesticides and interviewing well owners/operators. The data will be used to estimate national level distribution of pesticide residues in wells and to assess the relationship among residues, agricultural pesticide use and hydrogeologic vulnerability. The findings will be used to develop pesticides and drinking water regulations.

Respondents: Community Water Systems, Rural Domestic Well Owners, State and Local Governments.

Estimated Annual Burden: 5,247 Hours

Frequency of Collection: One time only

Comments on the abstract on this notice may be sent to:

Carla Levesque, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), Information and Regulatory System Division, Information Policy Branch, 401 M St., SW., Washington, DC. 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3019), 726 Jackson Place, NW, Washington, DC. 20503.

Date: December 7, 1987.

Daniel J. Fiorino,

Director, Information Regulatory Systems Division.

[FR Doc. 87-28983 Filed 12-16-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3303-6]

Water Quality Act of 1987 Implementation; Final Guidance Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of two final guidance documents for implementation of requirements under the Water Quality Act of 1987 (WQA). These documents are: "Nonpoint Source Guidance" and "State Clean Water Strategies: Meeting the Challenges of the Future."

The "Nonpoint Source Guidance" describes in detail the requirements under the new WQA section 319, "Management of Nonpoint Sources of Pollution." The purpose of this document is to guide States in preparing their State Nonpoint Source Assessment Reports and management Programs. It also covers the process for EPA review and approval of State Reports and Programs, the several sources of Federal funding authorized to assist States in implementing approved Nonpoint Source Management Programs, and the process for awarding such funds. EPA will not issue new regulations to implement WQA section 319, and will, therefore, rely on the "Nonpoint Source Guidance" to direct implementation of these new requirements.

The purpose of "State Clean Water Strategies: Meeting the Challenges of the Future" is to provide States with a basic framework for integrating new WQA initiatives and existing program requirements, and targeting water quality programs in order to achieve the most beneficial environmental results and to make the most efficient and effective use of Federal and State resources. The process described in this guidance is not required by the WQA although it builds upon the requirements in WQA section 319 and is designed to improve overall State water quality planning and management.

DATE: Copies of these final guidance documents are available beginning today.

ADDRESSES: EPA will mail to those people who submitted comments on the final draft guidance documents: (1) A copy of these two documents; and (2) a responsiveness summary of the comments submitted to EPA. Others who want to receive copies of these final guidance documents may obtain them by contacting: for "Nonpoint Source Guidance," Mr. Carl Myers, Chief Nonpoint Sources Branch, WH-585, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or telephoning him at (202) 382-7100; and for "State Clean Water Strategies: Meeting the Challenges of the Future," Ms. Betsy LaRoe, Office of Water, WH-556, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or telephoning her at (202) 382-5705.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Water, at the above addresses and telephone numbers, or contact the EPA Regional Office nearest you.

Date: December 11, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 87-29095 Filed 12-16-87; 8:45 am]

BILLING CODE 6560-50-M

[OW-FRL-3303-5]

Water Quality Act of 1987 Implementation; Final Guidance Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final guidance document entitled "Clean Lakes Program Guidance." The purpose of this guidance is to provide States with the information necessary to complete the lake water quality assessments, which are required by section 314 of the Water Quality Act of 1987 (WQA) and to prepare and submit Clean Lakes Grant applications. This guidance is intended as a supplement to the existing Clean Lakes Regulation, 40 CFR Part 35, Subpart H, "Cooperative Agreements for Protecting and Restoring Publicly Owned Fresh Water Lakes." EPA will not be issuing new regulations to implement the requirements of WQA section 314. This guidance is, therefore, EPA's basic direction for implementing these requirements.

DATE: Copies of these final guidance documents are available beginning today.

ADDRESSES: EPA will mail to those people who submitted comments on the final draft guidance documents: (1) A copy of the final guidance document; and (2) a responsiveness summary of the comments submitted to EPA. Others who want to receive a copy of the final "Clean Lakes Program Guidance" may obtain it by contacting Mr. Frank Lapensee, Office of Water, Office of Water Regulations and Standards, WH-585, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or telephoning him at (202) 382-7105.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Water, at the above address and telephone number, or contact the EPA Regional Office nearest you.

Date: December 11, 1987.

Lawrence J. Jensen,

Assistant Administrator for Water.

[FR Doc. 87-29096 Filed 12-16-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-801-DR]

Amendment to Notice of a Major-Disaster Declaration; New York

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New York (FEMA-801-DR), dated November 10, 1987, and related determinations.

DATED: December 8, 1987.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice: The notice of a major disaster for the State of New York, dated November 10, 1987, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe of November 10, 1987: The Counties of Putnam and Saratoga for Public Assistance only.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 87-28980 Filed 12-16-87; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

Bohemian Savings and Loan Association, St. Louis, MO; Replacement of Conservator With a Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act of 1933, as amened, 12 U.S.C. 1464(d)(6)(D)(1982), the Federal Home Loan Bank Board on December 11, 1987, duly replaced the Federal Savings and Loan Insurance Corporation as conservator for Bohemian Savings and Loan Association, St. Louis, Missouri, by the Federal Savings and Loan Insurance Corporation as sole receiver for the Association.

Dated: December 11, 1987.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-29021 Filed 12-16-87; 8:45 am]

BILLING CODE 6720-01-M

Surety Federal Savings and Loan Association, Morganton, NC; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Surety Federal Savings and Loan Association, Morganton, North Carolina, on December 11, 1987.

Dated: December 14, 1987.

By the Federal Home Loan Bank Board.

John M. Buckley, Jr.,

Secretary.

[FR Doc. 87-29020 Filed 12-16-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 87-27]

Massachusetts Port Authority v. The 8900 Lines et al.; Filing of Complaint and Assignment

Notice is given that a complaint filed by the Massachusetts Port Authority ("Massport") against a conference of water carriers operating under FMC Agreement No. 8900 (hereinafter "The 8900 Lines") was served December 11, 1987.

Massport alleges that The 8900 Lines and its member carriers, through the publication of an arbitrary surcharge as set forth in The 8900 Lines Freight Tariff No. 14, and more particularly, 2nd revised page 45, have violated various sections of the Shipping Act of 1984. Specific violations alleged include sections 10(b)(6)—unfair and unjustly discriminatory practices in the matter of rates; 10(b)(10)—assessment of a rate or charge that is unjustly discriminatory between shippers or ports; 10(b)(11)—making or giving any undue or unreasonable preference or advantage to ports and shippers that compete with Massport; 10(b)(12)—subjecting Massport to an unreasonable refusal to deal an undue or unreasonable prejudice or disadvantage; 10(c)(1)—imposition of a boycott upon Massport; 10(c)(2)—engaging in conduct that unreasonably restricts the use of intermodal services or technological innovations; and 10(b)(1)—imposition of an unjust and unreasonable regulation or practice; 46 U.S.C. app 1709 10(b)(6), 10(b)(10), 10(b)(11), 10(b)(12), 10(c)(1), 10(c)(2), and 10(d)(1).

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by December 12, 1988, and the final decision of the Commission shall be issued by April 12, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 87-29006 Filed 12-16-87, 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies; Duane W. Acklie

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 4, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Duane W. and Phyllis A. Acklie,* Lincoln, Nebraska; to acquire 1.94 percent; and LRC, Inc., Lincoln, Nebraska, owned and controlled by Mr. and Mrs. Acklie, to acquire 6.68 percent of the voting shares of Packers Management Company, Inc., Omaha, Nebraska, and thereby indirectly acquire Packers Bank and Trust Company, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, December 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28952 Filed 12-16-87; 8:45 am]

BILLING CODE 6210-01-M

The Citizens and Southern Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to reduce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 7, 1988.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *The Citizens and Southern Corporation,* Atlanta, Georgia; Citizens and Southern Georgia Corporation, Atlanta, Georgia; and C&S Business Credit, Inc., Tucker, Georgia; to acquire certain assets of the factoring business of Citizens and Southern Commercial Corporation, Tucker, Georgia, and the factoring assets of Chemical Business Credit Corp., Long Island, New York, New York, and Chemical Bank, New York, New York (Chemical Factoring Assets), and thereby engage in the factoring business, including the making and acquiring of loans or other extensions of credit to clients pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28953 Filed 12-16-87; 8:45 am]

BILLING CODE 6210-01-M

Community Bancorp, Inc. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed is this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the Offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Community Bancorp, Inc.,* Forest City, Pennsylvania; to acquire 42.98 percent of the voting shares of The First National Bank of Nicholson, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Indpendent Community Bancorp, Inc.*, Frankfort, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Kentucky Indpendent Bank, Inc., Frankfort, Kentucky.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Ranch National Bank, National Association, Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, December 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28954 Filed 12-16-87; 8:45 am]

BILLING CODE 6210-01-M

Franklin Financial Services Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than January 6, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Franklin Financial Services Corporation*, Chambersburg, Pennsylvania; to acquire 100 percent of the voting shares of The Mont Alto State Bank, Mont Alto, Pennsylvania.

Board of Governors of the Federal Reserve System, December 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28955 Filed 12-16-87; 8:45 am]

BILLING CODE 6210-01-M

Keystone Financial, Inc. et al.; Applications To Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in nonbanking activitity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 6, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Keystone Financial Inc.*, Harrisburg, Pennsylvania; to engage *de novo* through its subsidiary, Keystone Community Development Corporation I, Harrisburg, Pennsylvania, a for-profit corporation, in acquiring, rehabilitating, managing and selling real estate to low-moderate income individuals and families; participating as investors in projects for commercial development benefiting low-moderate communities; and providing technical assistance to existing and start-up neighborhoods based on not-for-profit development organizations pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in central and east-central Pennsylvania.

2. *Keystone Financial Inc.*, Harrisburg, Pennsylvania; to engage *de novo* through its subsidiary, Keystone Community Development Corporation II, Harrisburg, Pennsylvania, a non-profit corporation, in acquiring, rehabilitating, managing and selling real estate to low-moderate income individuals and families; participating as investors in projects for commercial development benefiting low-moderate communities; and providing technical assistance to existing and start-up neighborhoods based on not-for-profit development organizations pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in central and east-central Pennsylvania.

Board of Governors of the Federal Reserve System, December 11, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-28956 Filed 12-16-87; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Second Plan of Action to Implement the International Energy Program

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission has informed the Attorney General that it has no objection to his approving the proposed Second Plan of Action to Implement the International Energy Program. Section 252 of the Energy Policy and Conservation Act, 42 U.S.C. 6272, grants limited antitrust and breach of contract defenses to oil companies who carry out a plan of action approved by the Attorney General during an oil supply emergency. Before approving a plan of action, the Attorney General must consult with the Federal Trade Commission. 42 U.S.C. 6272(d)(1). The Commission's advice must be published in the **Federal Register.** *Id.*

FOR FURTHER INFORMATION CONTACT: Marc G. Schildkraut, Deputy Assistant Director, Bureau of Competition, Federal Trade Commission, Washington, DC 20580, Telephone: (202) 326–2622.

SUPPLEMENTARY INFORMATION: The text of the Second Plan of Action was published in the **Federal Register** on August 21, 1987 (52 FR 31704). On December 7, 1987, the Commission sent the following letter to the Assistant Attorney General, Antitrust Division, who is the Attorney General's delegate:

Honorable Charles F. Rule, Assistant Attorney General, Antitrust Division, Department of Justice, Washington, DC 20530.

Dear Mr. Rule: We have received your letter requesting the Commission's advice on the adoption of the proposed Second Plan of Action and implementing amendments to the Voluntary Agreement. Section 252(d) of the Energy Policy and Conservation Act provides that plans of action may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission.

As required by Section 252(d), the Commission, through its staff, has participated from the beginning in the preparation of the proposed Second Plan of Action. The plan, in final form, resulted from continuing consultations between the Department of Energy, the Department of Justice, the Department of State, and the Commission, at staff level. It was, moreover, subject to comments from interested parties who cared to comment, and was the subject of a hearing open to the public, following publication in the **Federal Register** on August 21, 1987.

The Commission hereby advices that it has no objection to your approving the Second Plan of Action and implementing Voluntary Agreement amendments referred to in your letter of November 9, 1987. By registering no objection to the Plan, including Annex II, the Commission does not mean to suggest that it regards representations made by foreign governmental authorities as entitled to similar deference or legal treatment outside the Plan in the context of a foreign blocking statute, a foreign sovereign compulsion defense, or other circumstances.

In accordance with Section 252(d), a copy of this letter will be published in the **Federal Register.**

By direction of the Commission.
Emily H. Rock,
Secretary.

By direction of the Commission.
Emily H. Rock,
Secretary.

[FR Doc. 87–28975 Filed 12–16–87; 8:45 am]
BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute, Acrylonitrile Study Liaison Group; Meeting

Notice is hereby given of the meeting of the Acrylonitrile Study Liaison Group on January 20, 1988, Building 31, C Wing, Conference Room 9. This meeting will be sponsored by the National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. The meeting will be open from 10 a.m. to adjournment for discussion of issues relating to the industrial hygiene protocol and exposure assessment strategy for the study. Attendance is open to the public but will be limited to space available.

Dr. David McB. Howell, Division of Cancer Etiology, National Cancer Institute, Building 31, Room 11A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–6927) will provide substantive program information, upon request.

Dated: December 14, 1987.

James B. Wyngaarden,
Director, NIH.

[FR Doc. 87–28993 Filed 12–16–87; 8:45 am]
BILLING CODE 4140–01–M

National Cancer Institute, Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, January 28, 1988, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on January 28 from 9 a.m. to 10 a.m. to discuss administrative matters and from 12 noon to 1 p.m. for a research presentation. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 28 from 10 a.m. to noon and from 1 p.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: December 7, 1987.

Betty J. Beveridge,
Committee Management Officer, NIH.

[FR Doc. 87–28992 Filed 12–16–87; 8:45 am]
BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute, Clinical Trials Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Clinical Trials Review Committee, National Heart, Lung, and Blood Institute, February 21–25, 1988, at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

The meeting will be open to the public on February 21, from 7:30 p.m. to approximately 8 p.m. to discuss administrative details and to hear a report concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public is limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and sec. 10(d) of Pub. L. 92–463, the meeting will be closed to the public on February 21 from approximately 8 p.m. to recess, and from 8 a.m. on February 22 to adjournment on February 25, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch National Heart, Lung, and Blood Institute, Building 31, Room 4A–21, National

Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the Committee members.

Dr. David M. Monsees, Jr., Contracts, Clinical Trials and Training Review Section, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Westwood Building, Room 550B, Bethesda, Maryland 20892, (301) 496–7361, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: December 7, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–28994 Filed 12–16–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; National Advisory Council on Aging; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging (NIA), on February 4–5, 1988, in Building 31, Conference Room 6, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public on Thursday, February 4, from 10:30 a.m. until 12:30 p.m. for a status report by the Director, National Institute on Aging, a report on the Neurosciences and Neuropsychology of Aging, and a report on the meeting of the Advisory Committee to the Director, NIH. It will again be open to the public Friday, February 5, from 9:00 a.m. until adjournment for a report on the ad hoc Committee on Program, a report on the Epidemiology, Demography and Biometry Program, and a report on the Epidemiologic and Economic Data Resources for Research on Aging. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting of the Council will be closed to the public on February 4 from 1:30 p.m. to recess for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Because this meeting is scheduled so far in advance, it is suggested that you contact Mrs. June McCann, Council Secretary for the National Institute on Aging, National Institutes of Health, Building 31, Room 5C05, Bethesda, Maryland 20892, (301/496–9322), for specific information.

(Catalog of Federal Domestic Assistance Program No. 13.866, Aging Research, National Institutes of Health)

Dated: December 7, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–28996 Filed 12–16–87; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; National Advisory Child Health and Human Development Council; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, January 25–26, 1988, in Wilson Hall, Shannon Building (Building 1), National Institutes of Health, Bethesda, Maryland, and the meeting of the Subcommittee on Planning on January 25 from 8:30 a.m. to 9:30 a.m. in Building 31, Room 2A03.

The Council meeting will be open to the public on January 25 from 9:30 a.m. until 5:00 p.m. The agenda includes a report by the Director, NICHD, and a presentation by the Human Learning and Behavior Branch, Center for Research for Mothers and Children. The meeting will be open on January 26 immediately following the review of applications if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 25 from 8:30 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendence by the public will be limited to space available.

In accordance with the provision set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on January 26 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Marjorie Neff, Council Secretary, NICHD, Landow Building, Room 6C08, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864, Population Research, and 13.865, Research for Mothers and Children, National Institutes of Health.)

Dated: December 7, 1987.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 87–28995 Filed 12–16–87; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–4311–09]

Availability of Draft Environmental Impact Statement; California Vegetation Management Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of draft environmental impact statement for the California Vegetation Management Program.

SUMMARY: Notice is hereby given of the availability of the Draft Environmental Impact Statement for the California Vegetation Management Program on BLM administered lands in California and northwest Nevada. The DEIS was prepared to address the impacts resulting from proposed manual, mechanical, prescribed burning and chemical control of vegetation on public lands. The DEIS also includes a risk assessment and worst-case analysis of impacts on human health from using herbicides as proposed by the program.

Comments on the DEIS are being solicited from interested parties.

A limited number of copies of the California Vegetation Management DEIS are available from: Mark Blakeslee, Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825 (916) 978–4725.

DATE: The public comment period is open for 60 days through February 15, 1988. Comments received after that data may not be considered in the Final EIS.

ADDRESSES: Written comments may be sent to the California Vegetation Management EIS Team Leader, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Mark Blakeslee, California State Office (916) 978–4725.

Dated: December 8, 1987.

Ronald D. Hofman,

Associate State Director.

[FR Doc. 87-28944 Filed 12-16-87; 8:45 am]

BILLING CODE 4310-40-M

[WY-030-08-4332-09]

Supplemental Environmental Impact Statement; Whiskey Mountain and Dubois Badlands Wilderness Study Area; Lander Resource Area, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of preparation date and notification of intent to prepare a supplemental environmental impact statement for two wilderness study areas in the Lander Resources Area, Rawlins BLM District.

SUMMARY: The purpose of this notice is to revise the date of a previously announced notice of intent to prepare an environmental impact statement on the Whiskey Mountain and Dubois Badlands Wilderness Study Areas (WSAs) in the Lander Resource Area, in Central Wyoming from Fiscal Year 86 to Fiscal Year 88. The initial notice was published in the **Federal Register**, Vol. 50, No. 216, page 46361, on Thursday, November 7, 1985.

The other purpose of the notice is to solicit additional comments and concerns from the public to aid BLM in developing recommendations as to the suitability or nonsuitability of wilderness designations for the Whiskey Mountain and Dubois Badlands, WSAs.

DATES: Public comments on the proposal will be accepted until January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Richard Bastin, District Manager, or Robert Janssen, Wilderness EIS Team Leader at (307) 324-7171 or send any correspondence to the following address before January 4, 1988: Bureau of Land Management, Rawlins District Office, P.O. Box 670, Rawlins, Wyoming 82310.

SUPPLEMENTARY INFORMATION: Public scoping meetings were conducted as originally scheduled on December 11 and 12, 1985.

However, since the initial supplemental EIS was not completed in time for the recommendations for these two WSAs to be included into the Final Resource Management Plan for the Lander Resource Area, and due to the length of time which has passed from the first notice, the public is again invited to comment on these two areas regarding; issues or concerns that should be considered in the recommendation for wilderness, resource values in the two areas which will augment BLM's current resource information, alternatives which should be considered, and any other factors that may be pertinent to the area's suitability or unsuitability as wilderness.

Geographic Area: The geographic area to be analyzed for impacts is Fremont County, Central Wyoming.

Maryln V. Jones,

Acting State Director, Wyoming.

December 7, 1987.

[FR Doc. 87-28946 Filed 12-16-87; 8:45 am]

BILLING CODE 4310-22-M

[UT-020-88-4212-08]

Salt Lake District; Intent To Amend Tooele Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM), Salt Lake District proposes to amend planning decisions 1-1-1a, 1-1-2, and 1-1-4 of the Tooele Management Framework Plan (MFP). The proposed amendments would affect 8,739 acres of public land by removing this acreage from decision 1-1-4 (undesignated public lands) and including 140 acres in decision 1-1-2 (disposal lands) and 8,599 acres in decision 1-1-1a (retention lands).

The 140 acres proposed to be included in decision 1-1-2 are legally described as follows:.

T. 6 S., R. 18 W., SLM.
Section 4: W½E½SW¼;
Section 8, NE¼NE¼;
Section 9, W½NE¼NW¼, NW¼NW¼.

The 8,599 acres proposed to be included in decision 1-1-1a are legally described as follows:

T. 3 S., R. 8 W., SLM.
Section 3: SW¼SW¼;
Section 4: S½SE¼, SE¼SW¼;
Section 9: E½;
Section 10: NE¼NE¼, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Section 20: W½;
Section 29: W½;
Section 30: S½;
Section 31: All.
T. 4 S., R. 8 W., SLM.
Section 5: All;
Section 6: All;
Section 7: All;
Section 8: All;
Section 9: S½;
Section 17: All;
Section 18: All;
Section 20: All;
Section 21: NW¼, N½SW¼, SW¼NE¼, NW¼SE¼.
T. 4 S., R. 9 W., SLM.
Section 1: All.
T. 6 S., R. 8 W., SLM.
Section 10: N½NE¼;
Section 11: NW¼, N½SW¼, SE¼Sw¼.

The acreage figure for each amended decision would then be:

Decision 1-1-1a—1,266,569 acres
Decision 1-1-2—9,157 acres
Decision 1-1-4—628,467 acres.

The proposed amendment would allow for the disposal of 140 acres adjacent to the Last Chance Ranch and for the exchange of 360 BLM acres with 319.83 acres of land in the Andrus exchange proposal and 8,239 BLM acres with 6,827.72 acres of land in the Skull Valley Company exchange proposal.

The 140 acres of Public Land adjacent to the Last Chance Ranch subject to the proposed amendment are located 12 mile north of Gold Hill, Utah. The 360 acres of Public Land involved in the proposed Andrus exchange are located in the south end of Skull Valley 5 miles northeast of Dugway, Utah. The 8,239 acres of Public Land involved in the proposed Skull Valley Company exchange are located in the central portion of Skull Valley 24 miles southwest of the junction of the Skull Valley road and Interstate Highway 80.

An environmental assessment (EA) will be completed to evaluate the proposed amendment. Issues to be addressed include impacts to wildlife habitat, wetlands, water rights, public access, and public water reserves. The following resources/programs will be evaluated in the EA: Lands, vegetation, wildlife habitat, recreation, livestock grazing, watershed, realty, minerals, and archaeology.

The Last Chance Ranch proposes to obtain by direct sale those public land adjacent to its operation which have been unintentionally put into agricultural production. The BLM proposes to exchange lands with Andrus and Skull Valley Company for the purposes of wildlife habitat management, watershed protection, recreation management, range management, and to better implement the multiple use principles regulated by the Federal Land Policy and Management Act of 1976.

EA's will be prepared on each of these proposals simultaneously with the EA prepared on the proposed amendment of Tooele MFP decision 1-1-4. Public participation is requested to identify issues on the proposed amendment and/or the proposed disposal and exchanges. Oral and/or written comments should be made by January 15, 1988 to: Mr. Howard Hedrick, Pony Express Resource Area Manager, Bureau of Land Management, Salt Lake City District,

2370 South 2300 West, Salt Lake City, Utah 84119, phone (801) 524–5348.

Deane H. Zeller,

District Manager.

[FR Doc. 87–28951 Filed 12–16–87; 8:45 am]

BILLING CODE 4310–DQ–M

[WY–920–08–4111–15; W–60113]

Proposed Reinstatement of Terminated Oil and Gas Lease; Sublette County, WY

December 10, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W–60113 for lands in Sublette County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms of rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–60113 effective September 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–28997 Filed 12–16–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–08–4111–15; W–92699]

Proposed Reinstatement of Terminated Oil and Gas Lease; Sweetwater County, WY

December 8, 1987.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease W–92699 for lands in Sweetwater County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–92699 effective June 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–28945 Filed 12–16–87; 8:45 am]

BILLING CODE 4310–22–M

[AZ–940–08–4212–12; A–20347 (B)]

Reconveyed Land Opened to Entry; Pinal County, AZ

December 11, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action will open 3,160.00 acres of reconveyed land in Pinal County to the public land laws and the mining laws.

FOR FURTHER INFORMATION CONTACT: Lisa Schaalman, Arizona State Office, (602) 241–5534.

SUPPLEMENTARY INFORMATION: On April 17, 1986, as authorized under section 206 of the Federal Land Policy and Management Act of October 21, 1976, the United States acquired the following land:

Gila and Salt River Meridian, Arizona

T. 7 S., 4. 18 E.,
Sec. 14, NE¼, S½;
Sec. 16, all;
Sec. 17, E½NE¼, SW¼NE¼, NW¼NW¼, SE¼NW¼;
Sec. 23, NE¼, E½NW¼, N½SE¼;
Sec. 24, all;
Sec. 25, NE¼, E½NW¼, S½;
Sec. 26, N½S½, S½SE¼;
Sec. 27, E½NE¼.

Comprising 3,160.00 acres in Pinal County.

At 9:00 a.m. on January 19, 1988, the lands will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on January 19, 1988, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9:00 a.m. January 19, 1988, the lands will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are goverened by the state law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Carol Burger,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 87–28930 Filed 12–16–87; 8:45 am]

BILLING CODE 4310–32–M

[MT–070–4212–13; M74131]

Realty Action; Montana

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Designation of additional public lands in Missoula County, Montana for disposal by exchange.

SUMMARY: BLM is engaged in a land exchange with Champion International. The preliminary notice segregating the exchange lands was published on July 2, 1987, Vol. 52, No. 127. The exchange proposal has been expanded to include additional lands, described below, which are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this amendment in the **Federal Register.**

Principal Meridian, Montana

T. 12 N., R. 16 W.,
Section 3, Lots 13, 14, NE¼SE¼;
Section 4, Lot 12, SW¼, W½SE¼.
T. 11 N., R. 15 W.,
Section 6, Lots 1, 2, 3, 4, 5, 6, 7 SE¼NW¼, E½SW¼, S½SE¼.
T. 12 N., R. 16 W.,
Section 6, Lots 1, 2, 3, 6, S½NE¼, SE¼NW¼, NE¼SW¼, N½SE¼.

FOR FURTHER INFORMATION CONTACT: Darrell Sall, Area Manager, Garnet Resource Area, Bureau of Land Management, 3255 Fort Missoula Road, Missoula, Montana 59806.

J.A. Moorhouse,

District Manager.

December 8, 1987.

[FR Doc. 87–28968 Filed 12–16–87; 8:45 am]

BILLING CODE 4310–DN–M

[NV-930-08-4212-11; N-47511]

Realty Action; Lease for Recreation and Public Purposes; Elko County, NV; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction; notice of realty action.

EFFECTIVE DATE: December 17, 1987.

FOR FURTHER INFORMATION CONTACT: Rodney Harris, District Manager, 3900 E. Idaho St., Elko, Nevada 89801, (702) 738–4071.

SUPPLEMENTARY INFORMATION: FR Doc. 87–26734 appearing in 52 FR 44497 on November 19, 1987, contained incorrect information relative to termination of the segregative effect on the lands described therein. Said notice is hereby corrected to read that the segregative effect will terminate upon issuance of a patent or as specified in an opening order to be published in the Federal Register, whichever occurs first.

Date: December 11, 1987.

Rodney Harris,

District Manager.

[FR Doc. 87–28998 Filed 12–16–87; 8:45 am]

BILLING CODE 4310-HC-M

[CO-942-08-4520-12]

Colorado; Filing of Plats of Survey

December 10, 1987.

The plats of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., December 10, 1987.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 10 N., R. 74 W., Sixth Principal Meridian, Colorado for Group No. 816, was accepted November 23, 1987.

The plat representing the dependent resurvey of portions of the west boundary, the subdivisional lines, and the subdivision of sections 18 and 22, T. 10 N., R. 73 W., Sixth Principal Meridian Colorado for Group No. 816, was accepted November 23, 1987.

These surveys were executed to meet certain administrative needs of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the subdivisional lines and boundaries of certain claims, T. 6 N., R. 94 W., Sixth Principal Meridian, Colorado for Group No. 827, was accepted November 30, 1987.

This survey was executed to meet certain administrative needs of this Bureau.

Marlin G. Livermore II,

Acting Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87–28947 Filed 12–16–87; 8:45 am]

BILLING CODE 4310-JB-M

Minerals Management Service

Development Operations Coordination Document; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS 0578, Block 215, portion, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon, Louisiana.

DATE: The subject DOCD was deemed submitted on December 10, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 144, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: December 10, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87–28937 Filed 12–16–87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Hall-Houston Oil Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Hall-Houston Oil Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS–G 6825, Block 227, Main Pass Area, offshore Louisiana. Proposed plans for the above, area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Venice, Louisiana.

DATE: The subject DOCD was deemed submitted on December 10, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Mr. Michael D. Joseph; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736–2875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the

Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: December 10, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-28933 Filed 12-16-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31112]

Canadian Pacific Ltd. & Incan Ships Ltd.; Joint Application

AGENCY: Interstate Commerce Commission.

ACTION: Approval of joint application under 49 U.S.C. 11321.

SUMMARY: The Commission has approved a joint application by Canadian Pacific Ltd. (CPL) and Incan Ships Ltd. (Incan Ships) for CPL to purchase a controlling (100%) interest in Incan, and thus its wholly-owned subsidiary, Incan Superior, Ltd. (Incan Superior). Notice was published at 52 FR 37675 (October 8, 1987). No comments were received.

FOR FURTHER INFORMATION CALL: Joseph H. Dettmar, (202) 275-7246 (TTD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357/4359 (DC Metropolitan area), (assistance for the hearing impaired is available through TTD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: December 10, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-28974 Filed 12-16-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31161]

Delaware and Hudson Railway Co.; Operating Agreement and Assignment of Trackage Rights; Springfield Terminal Railway Company; Exemption

Delaware and Hudson Railway Company (D&H) and Springfield Terminal Railway Company (ST) filed a notice of exemption for D&H's assignment to ST of its trackage rights over certain lines of Consolidated Rail Corporation (Conrail) and National Railroad Passenger Corporation (Amtrak). D&H and ST have entered an operating agreement under which ST will assume D&H's operations over the Conrail and Amtrak lines.

The following lines of Conrail are involved: (1) The Southern Tier Main Line between Binghamton, NY, and Buffalo, NY, a distance of approximately 212 miles, including all rights of D&H in the Buffalo Terminal, SK, and Bison Yards, and to Niagara Falls, NY, and Fort Erie, Ontario, Canada; (2) the Landover to RO Main Line between Landover, MD, and Potomac Yard, VA, a distance of approximately 10 miles; (3) the Port Road Main Line between Port and Perry, a distance of approximately 40 miles; (4) the Enola Branch between Enola and Port, including all tracks in Enola Yard and Harrisburg Yard, a distance of approximately 40 miles; (5) the Royalton Branch between Roy and Shocks, a distance of approximately 12 miles; (6) the Buffalo Main Line between Kase and Rockvile, a distance of approximately 49 miles; (7) the Lehigh Line Lehigh Secondary Track between Oak Island, NJ, and Dupont, PA, a distance of approximately 166 miles; and (8) the Main Line between Allentown and Philadelphia, PA, a distance of approximately 90 miles.

The following lines of Amtrak are involved: (1) The Amtrak Main Line between State and Roy in the vicinity of Harrisburg, PA, a distance of approximately 10 miles; and (2) the Amtrak Northeast Corridor Main Line between Perryville, MD, and Landover, MD, a distance of approximately 69 miles.

D&H and ST are wholly-owned subsidiaries of Guilford Transportation Industries, Inc. (GTI), which also owns the Maine Central Railroad Company (MEC) and the Boston and Maine Corporation (B&M). As a result of the proposed transaction, it is intended that ST will provide service as good as, or better than, service now provided.

Since D&H and ST are members of the same corporate family, the transaction falls within the class of transactions that are exempt from the prior review requirements of 49 U.S.C. 11343. *See* 49 CFR 1180.2(d)(3). The carriers anticipate that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in competitive balance with carriers operating outside the corporate family.

Any employee affected by the transaction would normally be protected by the labor conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978) (*Norfolk and Western*), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. (1980) (*Mendocino*). These conditions satisfy the statutory requirements of 49 U.S.C. 10505(g)(2) for the transaction. However, in a decision in Finance Docket No. 30965, *Delaware and Hudson Railway Company—Lease and Trackage Rights Exemption—Springfield Terminal Railway Company* (not printed), served May 18, 1987, the Commission set for modified procedure a series of notices filed by the GTI carriers because labor interests raised issues related to the level of employee protection for the transactions. The Commission asked the parties to that proceeding to address several issues and present additional evidence, including similar existing and future notices and transactions, such as this one, involving the GTI carriers.

Since the May 18, 1987 decision, the Commission has published in the **Federal Register** several related notices of exemption by various GTI carriers and indicated that the underlying transactions will be considered in the Finance Docket No. 30965 proceeding.

In an October 26, 1987 decision in Finance Docket No. 30965, the Commission ordered GTI not to implement any of the pending D&H/ST transactions until it issued a decision on the merits of that proceeding. The labor interests have filed petitions asking the Commission to prevent implementation of the assignment of D&H's trackage rights to St. The Commission will issue a separate decision determining whether this transaction will be considered in the Finance Docket No. 30965 proceeding and whether the trackage rights assignment will be postponed pending resolution of that proceeding.

If, prior to the Commission's determination of the appropriate level of labor protection for these GTI transactions, D&H and ST consummate this transaction and provide employees with *Norfolk and Western* protection, they do so at their own risk. Should the Commission subsequently determine that a higher level of protection is required, the carriers will be required to provide employees with that greater protection.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of petitions to revoke will not stay the transaction.

Decided: December 11, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-28973 Filed 12-16-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Exxon Chemical Americas

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on November 23, 1987, a proposed consent decree in *United States* v. *Exxon Chemical Americas*, Civil Action No. 871027, was lodged with the United States District Court for the Middle District of Louisiana. This consent decree settles a lawsuit filed simultaneously with the consent decree. The lawsuit, based on sections 301 and 309 of the Clean Water Act, 33 U.S.C. 301 and 309, seeks injunctive relief and civil penalties of up to $10,000 per day of violation before February 4, 1987, and $25,000 per day of violation on or after February 4, 1987. The complaint alleges, among other things, that the defendant discharged pollutants not authorized by its National Pollutant Discharge Elimination System ("NPDES") permit, thus violating Section 301, 33 U.S.C. 1311.

Under the terms of the proposed consent decree, the defendant has implemented, and will maintain and report on, several measures to prevent further violative discharges. These measures include mechanical changes, such as installing a backup motor for pumping untreated wastewater to a treatment facility, as well as operational changes, such as prohibiting the draining of untreated wastewater from storage tanks.

The consent decree also requires the defendant to pay a civil penalty of $40,000 for past violations of the Act. The consent decree also contains stipulated penalties for failure to comply with the terms of the consent decree.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States* vs. *Exxon Chemical Americas*, D.J. Ref. 90-5-1-1-2892.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Ronald Fisher, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2129.

United States Attorney's Office

Contact: Richard B. Launey, Assistant United States Attorney, Middle District of Louisiana, 352 Florida Street, Baton Rouge, LA 70801, (504) 389-0443.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of $1.20 payable to Treasurer of the United States.

Roger J. Marzulla,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87-28943 Filed 12-16-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts in Education Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Arts in Education Advisory Panel (State Arts in Education Grants) to the National Council on the Arts will be held on January 6-7, 1988, from 8:30 a.m.-6:00 p.m., and on January 8, 1988, from 9:00 a.m.-4:00 p.m. in room MO-9 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on January 8, 1988 from 1:00 p.m.-4:00 p.m. The topic for discussion will be policy issues.

The remaining sessions of this meeting on January 6-7, 1988, from 8:30 a.m.-6:00 p.m. and on January 8, 1988, from 9:00 a.m.-1:00 p.m. are for the purpose of review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

December 10, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87-28929 Filed 12-16-87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Opera-Musical Theater Overview Section) to the National Council on the Arts will be held on January 4-5, 1988, from 9:00 a.m.-5:30 p.m. in room MO-7 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topic of discussion will be guidelines.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

December 10, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–28927 Filed 12–16–87; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409]

Environmental Assessment and Finding of No Significant Impact; Dairyland Power Cooperative

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR Part 50 Appendix E, Section IV.F.2 and 10 CFR 50.47(b)(7) to Dairyland Power Cooperative (the licensee).

Environmental Assessment

Identification of Proposed Action: The exemption will delete the requirement for an annual emergency preparedness exercise in 1987 at the permanently shutdown LaCrosse Boiling Water Reactor (LACBWR). The exemption would also delete the requirement that information on LACBWR emergency plans to made available to the public on a periodic basis.

LACBWR was permanently shutdown on April 30, 1987 and reactor defueling completed on June 11, 1987. The LACBWR operating License No. DPR–45 was modified to possess-but-not-operate status on August 4, 1987.

Need for Proposed Action: The exemption is needed to eliminate unnecessary requirements that were appropriate for an operating plant but not for the permanently shutdown LACBWR facility.

Environmental Impact of the Proposed Action: The proposed action is administrative only and will have no environmental impact.

Alternative Use of Resources: This action does not involve the use of resources.

Agencies and Persons Consulted: The licensee initiated this exemption action. The NRC staff is reviewing their request. No other agencies or persons were consulted.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensees application dated September 1, 1987 as revised October 1, 1987. Which is available in the Commission's Public Document Room, 1717 H Street, NW., Washington, DC and at the LaCrosse Public Library, 800 Main Street, LaCrosse, Wisconsin.

Dated at Bethesda, Maryland, this 10th day of December 1987.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects III, IV, V and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 87–29001 Filed 12–16–87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–263]

Northern States Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulator Commission (the Commission) is issuing an exemption from the requirements of 10 CFR 50.62(c)(4), to Northern States Power Company (the licensee), for the Monticello Nuclear Generating Plant, located in Wright County, Minnesota.

Environmental Assessment

Identification of Proposed Acting: The exemption allows the use of a minimum flow rate of 26 GPM and the available sodium pentaborate concentration ranging from 13 weight percent (w/o) to 18 w/o depending on the volume of solution existing in the standby liquid control system (SLCS) storage tank. The flow rate and concentration of sodium pentaborate are different from existing requirements of 10 CFR 50.62(c)(4) consisting of a flow rate of 86 GPM and a concentration of 13.0 w/o of sodium pentaborate.

The exemption responds to the licensee's application for exemption dated August 18, 1987.

The Need for the Proposed Action: The exemption is needed because the licensee proposes to depart from 10 CFR 50.62(c)(4) requirements in view of the Monticello Nuclear Generating Plant having a reactor vessel diameter which is smaller than that used to establish the minimum flow and boron content requirements set forth in the regulation. For the Monticello reactor size, a lesser flow rate and different ranges in the concentration of sodium pentaborate solution will provide a negative reactivity injection in an anticipated transient without scram (ATWS) event equivalent to that called for by the regulation.

Environmental Impacts of the Proposed Action: The exemption provides a degree of protection for the Monticello reactor equivalent to that required by the regulation for reactors with larger reactor vessels for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an ATWS. Consequently, the probability of accidents has not been increased by the exemption and the post-accident radiological releases would not be greater than previously determined. The exemption does not otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this exemption.

The exemption does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the exemption.

Alternatives to the Proposed Action: Since the Commission has concluded that there are no significant environmental effects that would result from the action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributable to this facility and would result in a larger expenditure of licensee resources to comply with the Commission's reguations.

Alternative Use of Resources: This action involves no use of resources not previously considered in the Final Environmental Statement related to operation of the Monticello Plant, dated November 1972.

Agencies and Persons Consulted: The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the exemption.

For further details with respect to this action, see the application for the exemption dated August 18, 1987 which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Wasahington, DC, and at the Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Bethesda, Maryland, this 11th day of December 1987.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate III–3, Division of Reactor Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87–28999 Filed 12–16–87; 8:45 am]

BILLION CODE, 7590–01–M

Tennessee Valley Authority, Yellow Creek Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Order Revoking Construction Permit Nos. CPPR–172 and CPPR–173, which authorized construction of the Yellow Creek Nuclear Plant, Units 1 and 2, located in Tishomingo County, Mississippi. The construction permits are held by the Tennessee Valley Authority (TVA). The lastest construction completion dates in the permits are May 1, 1985 and May 1, 1986, respectively. On August 29, 1984, the Yellow Creek plant was officially cancelled by TVA. By letter dated October 24, 1985, TVA requested that the construction permits for Yellow Creek be withdrawn.

Environmental Assessment

Identification of Proposed Action: The proposed action is to issue an order that would terminate Construction Permit Nos. CPPR–172 and CPPR–173 for the Yellow Creek Nuclear Plant, Units 1 and 2. This action was requested by TVA because it does not plan to complete the plant.

The staff conducted an inspection of the Yellow Creek site on May 21, 1986 to determine, among other things, whether TVA's site stabilization plan, attached to the October 24, 1985 TVA letter, had been satisfactorily completed and to determine whether the site stabilization plan considered all critical site areas. A particular effort was made to inspect areas of the site that could be subject to continued erosion and contribute silt to surface waterbodies. Based on the inspection and its review of the site stabilization plan, the staff has not identified any area at the site that required attention that was not covered in the TVA's stabilization plan. Additionally, the site was found to be adequately stabilized and there were no areas where erosion could lead to detrimental offsite environmental impact.

The staff concludes, based on its review and inspection, that the Yellow Creek site is in an environmentally stable condition.

Need for Proposed Action: TVA has terminated construction of the nuclear power plant. This action by NRC would terminate the construction permits.

Environmental Impacts of the Proposed Action: This is a simple administrative action of terminating the outstanding permits to reflect the fact that there are no longer utilization facilities under construction at the Yellow Creek site and the site has been adequately stabilized.

Alternatives to the Proposed Action and Alternative Use of Resources: This action, for which there are no appropriate alternatives, does not involve the use of and, therefore, will not affect, available resources.

Agencies and Persons Consulted: The NRC staff reviewed TVA's request for termination of the construction permits and conducted the environmental review and inspection of the facility. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this proposed action. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the TVA's request for termination of Construction Permit Nos. CPPR–172 and CPPR–173 dated October 24, 1985, and TVA's site stabilization report transmitted by the October 24 letter. These documents regarding the NRC staff's environmental assessment of the proposed action are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC 20555. Correspondence concerning this facility will continue to be maintained at this location for at least one year.

Dated at Bethesda, Maryland, this 14th day of December 1987.

For the Nuclear Regulatory Commission.

Gary G. Zech,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 87–29002 Filed 12–16–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 55–20674]

Christopher D. Gentile, (Senior Reactor Operator License No. 20359); Rescission of Suspension

I

Mr. Christopher D. Gentile (the Licensee) is holder of Senior Reactor Operator License No. 20359 (the License) authorizing Mr. Gentile to operate the controls of nuclear reactor at the Shearon Harris facility (the Facility). The license was issued by the Nuclear Regulatory Commission (NRC or Commission) on December 26, 1985, and is due to expire on December 26, 1987.

II

On November 10, 1987, the NRC issued an "Order Suspending License Effective Immediately" (Order) which suspended Mr. Gentile's License on the basis of the NRC's determination that he had failed a simulator operating examination administered to him by the NRC on February 25, 1987. Mr. Gentile's License was to remain suspended until he successfully completed either an NRC-administered operating test for the Facility or the next annual operating test administered by the Facility licensee (and observed by the NRC) as part of the NRC-approved requalification program. Should the Licensee fail to successfully complete an operating test at the Facility by December 26, 1987, License No. 20359 was to expire. Mr. Gentile requested a hearing with respect to this Order.

III

At the request of Mr. Gentile, the NRC's Executive Director for Operations met with him on November 25, 1987 in Bethesda, Maryland. Mr. Gentile expressed his concern regarding the simulator operating examination administered to him on February 25, 1987 claiming it was neither properly administered nor properly graded. Mr. Gentile argued that the November 10, 1987 Order was not an acceptable mechanism to resolve his concerns as it did not provide for the review of the grading of this examination and possible

expurgation of the failure from his record. Accordingly, Mr. Gentile noted that he had not taken a utility-administered simulator examination in November 1987 as this would have had the effect of making his concern regarding the grading of the February 1987 examination moot. As a consequence, Mr. Gentile has not met the requirements of the Facility licensee's requalification program and, accordingly, cannot file a complete application for license renewal as called for by 10 CFR 55.57. Consequently, Mr. Gentile cannot avail himself of the timely renewal provisions of 10 CFR 55.55(b) and thus his license is due to expire on December 26, 1987.

Although the NRC Staff conducted an indepth review of Mr. Gentile's examination on two separate occasions, one in the Region and one in Headquarters, the Staff acknowledged that Mr. Gentile does not believe that his examination had been fairly and equitably reviewed. Consequently, the following course of conduct was agreed to by all parties at the meeting and during a subsequent phone call on December 8, 1987. The NRC will rescind the November 10, 1987 Order. Mr. Gentile agrees that he will not serve on-shift until he successfully completes a utility-administered simulator operating examination which will be observed by the NRC. He will take such an examination at the earliet possible time. Should he pass such an examination, he may resume licensed duties at the Facility in accordance with the provisions of the Commission's regulations in 10 CFR Part 55. Should he pass this examination, the NRC agrees to issue a letter declaring that the February 25, 1987 simulator operating examination is null and void and noting Mr. Gentile's continuing position that he disputes the results of that examination. Copies of that letter will be sent to the Facility licensee and will be placed in all appropriate agency files pertaining to Mr. Gentile's operator's license.

To assure that Mr. Gentile's License does not expire pending resolution of this matter, I have determined that a specific exemption pursuant to 10 CFR 55.11 is appropriate and has been granted in separate correspondence. Consequently, a renewal application filed by Mr. Gentile which complies with the provisions of 10 CFR 55.57(a)(1), (2), (3), and (6), shall be deemed adequate to satisfy the timely renewal provisions of 10 CFR 55.55(b), if filed on or before December 26, 1987. Mr. Gentile will supplement his renewal application by providing the information called for by 10 CFR 55.57(a)(4) and (5) upon his successful completion of the utility-administered simulator operating examination.

IV

Based upon the above agreed to course of conduct and particularly the Licensee's representation that he will not operate the controls of the facility until he has successfully completed the utility-administered simulator operating examination observed by the NRC, the suspension of the Licensee's senior reactor operator License imposed by the Order on November 10, 1987 is hereby rescinded.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 11 day of December, 1987.

[FR Doc. 87-29003 Filed 12-16-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co., Monticello Nuclear Generating Plant; Exemption

I

The Northern States Power Company (the licensee) is the holder of Facility Operating License No. DPR-22 which authorizes operation of the Monticello Nuclear Generating Plant. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility incorporates a boiling water reactor at the licensee's site located in Wright County, Minnesota.

II

By letter dated August 18, 1987, the licensee requested an exemption from the requirements of 10 CFR 50.62(c)(4), which establishes the minimum injection flow rate and the boron concentration for the standby liquid control system (SLCS).

Specifically, 10 CFR 50.62(c)(4) requires that each boiling water reactor must have a SLCS with minimum flow capacity equivalent in control capacity to 86 gallons per minute (GPM) with a boron concentration of 13 weight percent (w/o) sodium pentaborate. The licensee requests an exemption from this requirement to permit use of a minimum flow rate of 26 GPM and an available sodium pentaborate concentration ranging from 13.7% to 18 w/o depending on the volume in the existing SLCS storage tank. The B10 content of the boron in the dissolved sodium pentaborate solution would be enriched above the natural isotopic composition.

The requirement established by the regulation was intended to provide for prompt injection of negative reactivity into a boiling water reactor pressure vessel in the event of an anticipated transient without scram (ATWS) event. The reactor vessel size used to establish the required flow rate of 86 GPM and the sodium pentaborate concentration of 13 w/o was the large 251-inch diameter vessel used in the BWR/5 and BWR/6 designs. The Monticello reactor has a much smaller 206-inch diameter vessel. For the Monticello reactor a lesser flow rate, following the formula proposed by the licensee, will provide a negative reactivity injection in an ATWS event equivalent to that called for by the regulation for the larger 251-inch diameter boiling water reactor vessel. See Generic Letter 85-03, "Clarification of Equivalent Control Capacity for Standby Liquid Control Systems," January 28, 1985.

III

In this case, the flow rate-boron 10 concentration relationship established by the licensee's formula will provide the equivalent level of control capacity for the smaller Monticello reactor pressure vessel as that called for by the rule based on larger reactor pressure vessels. Requiring Monticello to provide the flow rate-boron 10 concentration capacity specified by the rule is not necessary to provide adequate negative reactivity in the event of an ATWS at Monticello. Thus, the Commission's staff finds that there are special circumstances in this case which satisfy the standards of 10 CFR 50.12(a)(2)(ii). As set forth in the Safety Evaluation of Amendment No. 56, issued concurrently with this Exemption, the staff has determined that operation under the revised Technical Specifications governing flow rate and boron-10 concentration will not endanger public health and safety and will not be inimical to the common defense and security.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and hereby grants the following exemption with respect to the requirements of paragraph (c)(4) of 10 CFR 50.62.

The licensee may operate the facility with flow rate and boron concentration requirements as set forth in sections 3.4 and 4.4 of the Monticello facility Technical Specifications.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this Exemption will have no significant impact on the environment as documented in the accompanying Environmental Assessment and Finding of No Significant Impact. This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 11th day of December 1987.

[FR Doc. 87-29000 Filed 12-16-87; 8:45 am]

BILLING CODE 7590-01-W

OFFICE OF PERSONNEL MANAGMENT

Federal Prevailing Rate Advisory Committee; Open Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, January 13, 1988
Wednesday, January 20, 1988
Wednesday, January 27, 1988

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Presonnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the abililty of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b (c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman of Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

December 10, 1987.

[FR Doc. 87-29019 Filed 12-16-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16172; 812-6935]

Cash Reserve Management, Inc. et al.; Application

December 11, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application For Exemption Under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Cash Reserve Management, Inc., Municipal Cash Reserve Management, Inc., Hutton Government Fund, Inc., Hutton AMA Cash Fund, Inc., Hutton Investment Series Inc., Hutton VIP Fund, Hutton National Municipal Fund Inc., Hutton California Municipal Fund Inc., Hutton New York Municipal Fund Inc., Hutton Master Series, Hutton Institutional Fund Inc. and Hutton Municipal Series Inc. (the "Investment Companies"), SLBP Acquisition Corp. ("SLBP") and E.F. Hutton & Company Inc. ("E.F. Hutton" or the "Investment Adviser").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 15(a).

Summary of Applications: Applicants seek an order to permit the implementation without formal shareholder approval of new investment advisory agreements, approved by the Investment Companies' Boards of Directors/Trustees (the "Boards of Directors"), between the Investment Companies and E.F. Hutton, and to permit E.F. Hutton to receive from each Investment Company, subject to shareholder approval, any and all fees earned under the new agreements from the date on which SLBP first acquires more than 25% of the shares of Hutton Group (the "Assignment") until the date the new investment advisory agreements are approved or disapproved by shareholders of each respective Investment Company (the "Interim Period"), which period would be no longer than 120 days.

Filing Date: The application was filed on December 11, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 4, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Each of the Investment Companies (except Hutton VIP Fund) and E.F. Hutton & Company Inc.—31 West 52nd Street, New York, New York 10019; Hutton VIP Fund—11011 North Torrey Pines Road, La Jolla, California 92037; SLBP Acquisition Corp.—American Express Tower, World Financial Center, New York, New York 10285.

FOR FURTHER INFORMATION CONTACT: Houghton R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is

available for a fee from the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representatives

1. Each of the Investment Companies is registered under the 1940 Act as an open-end management investment company and has E.F. Hutton as its investment adviser and distributor. The advisory fees of the Investment Companies range from 0.25% per annum of average daily net assets to 0.90% per annum of average daily net assets. E.F. Hutton is registered as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). G.T. Capital Management, Inc. ("G.T. Capital"), an investment adviser registered under the Advisers Act, serves as portfolio manager for three Series of Hutton Invesment Series Inc.: Pacific Series, European Series and Global Series. Hutton Investment Series Inc. and E.F. Hutton have entered into a portfolio management agreement for the Interim Period. SLBP is a wholly-owned subsidiary of Shearson Lehman Brothers Holdings Inc. ("Shearson Holdings"). Shearson Holdings is a majority-owned subsidiary of American Express Company.

2. Shearson Holdings and Hutton Group entered into a definitive Agreement and Plan of Merger (the "Merger Agreement") executed as of December 2, 1987. The Merger Agreement provides that the entire equity interest of Hutton Group would be acquired by SLBP (or by any other direct or indirect wholly-owned subsidiary of Shearson Holdings to which SLBP assigns its rights under the Merger Agreement) pursuant to a tender offer (the "Tender Offer"). The Tender Offer is conditional upon, among other things, approximately 51% of the outstanding shares of common stock of Hutton Group being validly tendered, and not withdrawn, prior to the expiration of the offer. The Tender Offer commenced on December 7, 1987, and is currently scheduled to expire on January 5, 1988.

3. In the event that the Tender Offer is successful, SLBP (or another Shearson Holdings wholly-owned subsidiary) will acquire in excess of 25% of the outstanding voting securities of Hutton Group. It is thus likely that, in the near future, the shares which SLBP will own will represent the largest single holding of shares of Hutton Group. The acquisition of Hutton Group shares may result in an assignment of the existing investment advisory agreements of each of the Investment Companies within the meaning of section 2(a)(4) of the 1940 Act, thus terminating each investment advisory agreement pursuant to its terms.

4. At meetings held by telephone on December 8 and 9, 1987, the Boards of Directors of each of the Investment Companies, including the members who are not "interested persons" of the applicable Investment Comapny as that term is defined inspection 2(a)(19) of the 1940 Act, with the advice and assistance of independent counsel, concluded unanimously that it is in the best interests of each Investment Company and its shareholders to file the application as a necessary step in implementing new advisory agreements during the Interim Period in a manner that would minimize the disruption in advisory services to each Investment Company. The Boards of Directors of the Investment Companies have scheduled in-person meetings during December for the formal consideration of the advisability of entering into new agreements providing for advisory services during the Interim Period. As part of that process, the Boards of Directors, with the advice and assistance of independent counsel, will comply with the requirements of section 15(c) of the 1940 Act.

Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The new advisory agreements to be implemented during the Interim Period will have the same terms and conditions as the existing advisory agreements and the new portfolio management agreement to be implemented during the Interim Period will have the same terms and conditions as the existing portfolio management agreement.

2. In considering new advisory agreements to be implemented during the Interim Period, the Boards of Directors, including a majority of members who are not "interested persons" of the Investment Companies, will comply with the requirements of section 15(c) of the 1940 Act. Upon completion of their review, the application will be amended promptly to reflect the Directors' formal conclusions and the bases therefor.

3. Fees earned by E.F. Hutton and by G.T. Capital and paid by an Investment Company during the Interim Period in accordance with the terms of a new advisory agreement or new portfolio management agreement will be maintained in an interest-bearing escrow account, and amounts in the account will be paid to: (a) E.F. Hutton only upon approval by the shareholders of that Investment Company, or (b) in the absence of such approval, to the respective Investment Company.

4. E.F. Hutton will pay the costs of preparing and filing the application and the costs of holding all special meetings of the Investment Companies' shareholders necessitated by the Assignment, including the cost of proxy solicitations. Additionally, E.F. Hutton will pay the incremental costs necessitated by the Assignment in connection with the meetings of Investment Company shareholders which would otherwise be held by the Investment Companies.

5. E.F. Hutton will take all appropriate steps so that the scope and quality of advisory and other services provided to the Investment Companies during the Interim Period will be at least equivalent, in the judgment of the respective Boards of Directors, including a majority of the Directors who are not "interested persons", to the scope and quality of services previously provided. In the event of any material change in personnel providing services pursuant to the advisory agreements, E.F. Hutton will apprise and consult with the Board of Directors of the affected Investment Companies in order to assure that they, include a majority of the Directors who are not "interested persons," are satisfied that the services provided will not be diminished in scope or quality.

Applicants' Legal Conclusions

The requested order is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the following reasons:

1. Based on a number of factors, the Board of Directors of Hutton Group decided to pursue alternatives to maximize shareholder value. The Board's actions led to the Merger Agreement. Due to the broad public ownership of Hutton Group shares, the Tender Offer is the most efficient means as the first step to consummating the transaction. Because completion of the Tender Offer might be deemed to cause an assignment, and hence the termination, of the Investment Companies' existing investment advisory agreements, the Boards of Directors of the Investment Companies were required by the circumstances to consider appropriate actions in the best interests of the Investment Companies

and their shareholders. The Boards determined, on a preliminary basis, that continuation of the existing advisory, distribution and operational arrangements is in the best interests of each of the Investment Companies and their shareholders and resolved to file the application.

2. It is not possible for the Investment Companies to obtain shareholder approval of new advisory agreements in accordance with section 15(a) of the 1940 Act prior to the Assignment. The Investment Companies had no advance notice of the proposed transaction. Shareholders' meetings require the preparation and clearance of proxy materials, as well as a sufficient solicitation period to obtain the requisite quorum. Although the Investment Companies are currently preparing these materials as expeditiously as possible, holding a special meeting of shareholders before the Assignment would be impossible as there would not be an adequate solicitation period to reasonably assure a quorum of shareholders present at the meeting.

3. There will be no diminution in the scope and quality of services provided to the Investment Companies. Applicants state that new advisory agreements to be implemented during the Interim Period will have the same terms and conditions as the existing agreements. Accordingly, each Investment Company will receive, during the Interim Period, the same investment advisory services, provided in the same manner and at the same fee levels, by essentially the same personnel as it received prior to the Assignment.

4. Applicants believe that the granting of the requested exemption would be within the spirt of Rule 15a–4 under the 1940 Act. The Commission's release proposing Rule 15a–4 suggests that where an assignment is foreseeable, the policy of the 1940 Act that shareholder approval be obtained prior to entering into an investment advisory relationship should not be thwarted by providing an exemption from section 15(a) of the 1940 Act, because in such a case, it would be reasonably practicable to obtain shareholder approval. Applicants submit that the situation at hand is similar to other types of assignments that are unforeseeable. The extremely rapid culmination of the Shearson Holdings-Hutton Group negotiations did not present, and the form of transaction deemed most appropriate by Shearson Holdings and Hutton Group did not permit, an opportunity to secure prior approval of new advisory agreements by shareholders of the Investment Companies.

5. Applicants submit that to deprive E.F. Hutton of its customary fees for the Interim Period for no reason other than the fact that the Tender Offer may technically result in an assignment of the Investment Companies' existing investment advisory agreements, would be a harsh result and an unreasonable penalty to attach to the transaction.

6. The Commission has previously granted exemptive relief substantially similar to that requested by the Applicants.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–28964 Filed 12–16–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2298]

Mississippi; Declaration of Disaster Loan Area

Warren County and the adjacent County of Hinds in the State of Mississippi constitute a disaster area because of damage from tornadoes and flooding which occurred on November 16, 1987. Applications for loans for physical damage may be filed until the close of business on February 9, 1988, and for economic injury until the close of business on September 12, 1988, at the address listed below:

Disaster Area 2 Office,
Small Business Administration,
120 Ralph McGill Blvd., 14th Fl.,
Atlanta, Georgia 30308

or other locally announced lcoations.

The interest rates are:

Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Businesses Without Credit Available Elsewhere	4.000%
Businesses (EIDL) Without Credit Available Elsewhere	4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.000%

The number assigned to this disaster is 229812 for physical damage and for economic injury the number is 658000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: December 11, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–28965 Filed 12–16–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1142]

Advisory Committee on International Investment, Technology, and Development; Meeting

The Department of State will hold a meeting of the Advisory Committee on International Investment, Technology and Development on January 14, 1988 from 9:00 a.m. to 1:00 p.m. The meeting will be held in Conference Room 1107 of the Department of State, 2201 "C" Street, NW, Washington, DC 20520.

The agenda and approximate times topics will be discussed are below:

—9:00 Review of agenda and introduction of first speaker.

Professor Isaiah Frank, Johns Hopkins School for Advanced International Studies.

—9:05 Welcoming remarks.

Alan Larson, Acting Assistant Secretary of State, Economic and Business Affairs.

—9:20 Review of new draft of Code of Conduct on Transnational Corporations.

William Milam, Deputy Assistant Secretary of State, Economic and Business Affairs.

Followed by questions and comments by committee members.

—9:50 Discussion of investment questions at the OECD Committee on Investment and Multinational Enterprises.

Marilyn Meyers, Director, Office of Investment Affairs.

Followed by questions and comments by committee members.

—10:20 Coffee Break.

—10:40 Review of the negotiations on Trade Related Investment Measures at the Uruguay Round talks in Geneva.

Robert Cornell, Deputy Assistant Secretary, Department of the Treasury.

Followed by questions and comments by committee members.

—11:20 Explanation of the Investment Chapter of the U.S.-Canada Free Trade Agreement.

Robert Cornell—The negotiator of that chapter.

—11:40 A businessman's view of the FTA. Jules Katz, Government Research, Inc.

Followed by comments and questions by the members.

—12:00 A presentation on debt-equity swaps.

L. Thomas Block, Senior Vice President, Chemical Bank.

Followed by questions and comment from the members.

—12:30 Discussion of topics for consideration at future meetings.

Marilyn Meyers.

—1:00 Meeting closes.

Access to the Department of State is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs (202) 647–2585 in order to arrange admittance. Please use the "C" Street entrance.

December 9, 1987.

Robert C. Reis, Jr.,

Executive Secretary.

[FR Doc. 87–28938 Filed 12–16–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–8/1145]

Legal Panel on International Telecommunications Law of the U.S. Organization for the International Telegraph and Telephone Consultative Committee and International Radio Consultative Committee; Meeting

The Department of State announces the fourth meeting of the Panel on International Telecommunications Law, which is under the auspices and authority of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and International Radio Consultative Committee (CCIR). The Panel's meeting will convene on Thursday, January 14, 1988 in Room 1107, Department of State, 2201 C Street, NW., Washington, DC.

The meeting will begin at 3:00 p.m. Items to be discussed will include:

1. ITU Draft Constitution
2. Briefings on major upcoming ITU conferences
3. Announcement of new agenda items
4. Future work of the Panel

Members of the general public may attend the meeting and join in the discussion. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of the Deputy U.S. Coordinator for International Communications and Information Policy, Mr. Thomas J. Ramsey, State Department, Washington, DC.; telephone (202) 647–5832. All attendees must use the C Street entrance to the building.

Date: December 10, 1987.

Earl S. Barbely,

Chairman, U.S. CCITT National Committee.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 87–28934 Filed 12–16–87; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice CM–81/1143]

Overseas Schools Advisory Council; Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Executive Committee meeting on Tuesday, January 19, 1988, at 9:30 a.m. in Conference Room 1205, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

Agenda items scheduled for discussion are as follows:

I. Council programs of education assistance
   (a) Final report of 1986 program and initial program report on 1987 program
   (b) Council's efforts in securing contributions for 1987 program
   (c) Recommendations of council's evaluation committee regarding projects submitted by regional overseas schools associations for 1988 program
   (d) Report of the subcommittee to increase the participation of U.S. corporations and foundations in council program
II. Highlights of forthcoming Carnegie report on urban education
III. Initial results of surveys regarding schools fund raising drives and activities of overseas schools regional associations
IV. Council communication with U.S. corporations and foundations
V. Selection of date of council's annual meeting

Access to the State Department is controlled. Members of the public desiring to attend the meeting may write to the Overseas Schools Advisory Council, Department of State, Room 234, SA–6, Washington, DC 20520 or telephone Ms. Joyce Bruce on area code 703–875–6220, prior to January 19. The public may participate in discussions at the Chairman's instructions.

Date: December 8, 1987.

Ernest N. Mannino,

Executive Secretary, Overseas Schools Advisory Council.

[FR Doc. 87–28926 Filed 12–16–87; 8:45 am]

BILLING CODE 4710–24–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, as Amended by Pub. L. 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection Under Review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: 1988 Interim Residential Survey: Customers of Municipal and Cooperative Distributors of TVA Power.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 5,820.

Estimated Total Annual Burden Hours: 1,928.

Need For and Use of Information: The 1988 Interim Residential survey will provide information about how the residential customers served by the municipal and cooperative distributors of TVA power use electricity. This information is required for load forecasting and program planning by

several different organizations within TVA.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-28935 Filed 12-16-87; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD1-87-099]

New York Harbor Traffic Management Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the New York Harbor Traffic Management Advisory Committee to be held on January 7, 1988, in the Conference Room, second floor, U.S. Coast Guard Marine Inspection Office, Battery Park, New York, New York, beginning at 10:00 a.m.

The agenda for this meeting of the New York Harbor Traffic Management Advisory Committee is as follows:

1. Introductions.
2. Vessel Traffic Service New York update.
3. VTS Long-term System Improvement options.
4. Projected Cross-Hudson ferry route—Presentation.
5. Update Kill Van Kull/Newark Bay Dredging Project.
6. Bridge Administration—Issues and Trends.
7. Topics from the floor.
8. Review of agenda topics and selection of date for next meeting.

The New York Harbor Traffic Management Advisory Committee has been established by Commander, First Coast Guard District to provide information, consultation, and advice with regard to port development, maritime trade, port traffic, and other maritime interests in the harbor. Members of the Committee serve voluntarily without compensation from the Federal Government.

Attendance is open to the interested public. With advance notice to the Chairperson, members of the public may make oral statements at the meeting. Persons wishing to present oral statements should so notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Committee at any time.

FOR FURTHER INFORMATION CONTACT: Commander W. Young, USCG, Executive Secretary, NY Harbor Traffic Management Advisory Committee, New York Vessel Traffic Service, Governors Island, New York, NY 10004; or by calling (212) 668-7954.

Dated: December 8, 1987.

R.L. Johanson,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 87-28988 Filed 12-16-87; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Reestablishment of the Advisory Committee for the Preservation of the Treasury Building

The Department of the Treasury, pursuant to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92-463, as amended, and with the approval of the Secretary of the Treasury, announces the reestablishment of the Advisory Committee for the Preservation of the Treasury Building.

The primary purpose of the committee is to consult with and advise the Secretary of the Treasury and his staff upon request regarding various rehabilitation projects in the Main Treasury Building. The committee will also undertake active solicitation to raise funds to help finance some of these important undertakings as well as to encourage donors to contribute works of art and furnishings of historic importance to the Department of the Treasury.

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Department of the Treasury has reestablished the Advisory Committee for the Preservation of the Treasury Building for a one-year period.

John F.W. Rogers,

Assistant Secretary of the Treasury (Management).

[FR Doc. 87-29004 Filed 12-16-87; 8:45 am]

BILLING CODE 4810-25-M

Corrections

Federal Register
Vol. 52, No. 242
Thursday, December 17, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket No. 70905-7205]

Interjurisdictional Fisheries

Correction

In proposed rule document 87-26943 beginning on page 44922 in the issue of Monday, November 23, 1987, make the following correction:

§ 253.3 [Corrected]

On page 44924, in the first column, in § 253.3, in paragraph (a)(1), in the first line of the formula, "Value" should read "Volume".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-00248; FRL-3297-2]

Pesticide Tolerances for Chlorpyrifos; Technical Amendment

Correction

In rule document 87-27552 beginning on page 45824 in the issue of Wednesday, December 2, 1987, make the following corrections:

§ 180.342 [Corrected]

1. On page 45825, in § 180.342(a), in the table, there should be a reference to footnote 1 after "2.0" in the parts per million column in the entry beginning "Vegetables, leafy".

2. In the same table, in the entry for walnuts, the parts per million should read "0.2" (with no footnote reference).

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[OPTS-84027; FRL-3292-4]

Preliminary Assessment Information and Health and Safety Data Reporting; Addition of Chemicals

Correction

In rule document 87-26555 beginning on page 44826 in the issue of Friday, November 20, 1987, make the following corrections:

§ 716.120 [Corrected]

1. On page 44828, in § 716.120(a)(1), in the table at the bottom of the page, in the entry for CAS No. 6247-34-3, there should be an open parenthesis in front of "acetylamino)".

2. On page 44829, in the same table, in the entry for CAS No. 6424-85-7, "4-]" should read "4-[".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 442, 488, and 489

[HSQ-142-P]

Medicare and Medicaid; Survey and Certification of Health Care Facilities

Correction

In proposed rule document 87-26543 beginning on page 44300 in the issue of Wednesday, November 18, 1987, make the following correction:

On page 44300, in the second column, under **FOR FURTHER INFORMATION CONTACT**, the area code was omitted from the telephone number. The telephone number should read "(301) 594-3813".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Statement of Organization, Functions and Delegations of Authority; Office of Information Resources Management

Correction

In notice document 87-27976 beginning on page 46417 in the issue of Monday, December 7, 1987, make the following correction:

On page 46417, in the third column, in *Section AMM.10*, in the second and third lines from the bottom, "Assistant Secretary for Management, who report to the" should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Interim Procedures for Requesting Health Assessments

Correction

In notice document 87-26981 beginning on page 45018 in the issue of Tuesday, November 24, 1987, make the following correction:

On page 45018, in the third column, under **DATE**, in the second line, "February 22, 1987" should read "February 22, 1988".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-72-AD; Amdt. 39-5776]

Airworthiness Directives; Avions Marcel Dassault—Breguet Aviation Falcon 10 Series Airplanes

Correction

In rule document 87-26664 beginning

on page 44375 in the issue of Thursday, November 19, 1987, make the following correction:

§ 39.13 [Corrected]

On page 44376, in the second column, in § 39.13, in paragraph A., in the ninth line, "F100-262" should read "F10-262".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No. 25477; SFAR No. 52]

Special Federal Aviation Regulation No. 52; Extension of Compliance Date for Certain Large Airplanes Operated Under Part 135, in Other Than Commuter Air Carrier Operations, To Comply With Pending Seat Cushion Flammability Regulation

Correction

In rule document 87-27626 beginning on page 45910 in the issue of Wednesday, December 2, 1987, make the following correction:

On page 45911, in the second column, in the fifth and sixth lines, "October 1, 1983" should read "October 11, 1983".

BILLING CODE 1505-01-D

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 4]

Propaganda as Educational and Cultural Materials; World-Wide Free Flow (Export-Import) of Audio-Visual Materials

Correction

FR Doc. 87-28516 beginning on page 47029 in the issue of Friday, December 11, 1987, corrected an interim rule. It was published in the "Proposed Rules" section of the issue. It should have appeared in the "Rules and Regulations" section.

BILLING CODE 1505-01-D

Federal Register

Thursday
December 17, 1987

Part II

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs; Interim Final Rules, Final Rule, and Notice of Intent

Department of Agriculture
Department of Energy
National Aeronautics and Space Administration
Department of Commerce
Tennessee Valley Authority
Department of Labor
Department of Defense
Department of Education
Pennsylvania Avenue Development Corporation
Veterans Administration
Environmental Protection Agency
General Services Administration
Department of the Interior
Department of Justice
Federal Emergency Management Agency
Department of Health and Human Services
Department of Transportation
Department of Housing and Urban Development

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This regulation incorporates certain statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) occasioned by passage of Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), Pub. L. 100-17, 101 Stat. 246. The interim rule addresses only those amendments upon which the law is explicit and allows little, if any, administrative discretion or interpretation and for which a period of public notice and comment would be impractical. For the easy reference of the reader, the unchanged provisions of the existing regulation are reprinted in their entirety in order to present a complete regulation at a single source. Other changes made in the Uniform Act will require the development or modification of specific criteria which will be the subject of public notice and comment at a later date.

The immediate objective of today's interim final rule action is to provide implementing regulations for those Federal and State agencies that are currently able to allow payment of certain specified benefits as established by the 1987 Amendments for persons displaced on or after April 2, 1987.

DATES: The provisions of this interim final rule are effective December 17, 1987. For further information about implementation dates, see the discussion in the supplementary information section below. Comments must be received on or before February 16, 1988.

ADDRESS: Submit signed, written comments, preferably in triplicate, to FHWA Docket No. 87-22, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Barbara Reichart, Director, Office of Right-of-Way, HRW 1, (202) 366-0116; or Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. For specific program information, see individual agency submissions published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION:

Background

In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief. Therefore, in May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each covered agency for the Uniform Act. On February 27, 1985, a Presidential Memorandum was signed and published in the **Federal Register** on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. The Secretary of the Department of Transportation delegated this responsibility to the Federal Highway Administration. On March 5, 1985 (50 FR 8953), DOT published in the **Federal Register** a model Uniform Act rule, which (in accordance with the President's February 27, 1985 memorandum) served as the basis for a proposed common Uniform Act rule for the 16 other affected agencies (50 FR 8955). The proposed common rule was issued for comment by those 16 agencies on May 28, 1985. After consideration of comments, the disparate regulations of all affected agencies were superseded by the common rule which was published as a final rule on February 27, 1986 (51 FR 7000). This common rulemaking effort, applicable to both direct Federal programs and projects and federally-assisted programs and projects undertaken by State or local agencies, achieved consistency in regulations among the separate Federal agencies. To a significant extent, this common rulemaking effort presaged many of the statutory changes to the Uniform Act made by the 1987 Amendments. In the administrative area, for example, the Amendments specifically designate the DOT as lead agency and require it, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, with the major exception of payment levels or criteria that were set by statute, the common rulemaking effort granted greater flexibility and discretion to State and local agencies, a theme reiterated in the 1987 Amendments.

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45667) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies will take to implement the 1987 Amendments and the reasons for issuing this interim final rule. This interim final rule is intended to assist those Federal and State agencies that are now willing and able to implement the non-controversial provisions of the 1987 Amendments, which are described below. This interim final rule will be followed by a notice of proposed rulemaking (NPRM), that will seek comments on implementing all provisions of the 1987 Amendments. The NPRM will be followed by a final rule that will replace this interim final rule prior to the date the 1987 Amendments become mandatory, which is on or before April 2, 1989.

Implementation Dates

An implementation date prior to December 17, 1987, may be established by a Federal agency for some or all of its programs. However, it must be applied so that displacees in like circumstances are treated in a uniform and consistent manner. Such date shall not be prior to April 2, 1987, the date of enactment of the 1987 Amendments. For Department of Transportation (DOT) direct Federal projects, displacing agencies may elect to apply this regulation to any person displaced after April 2, 1987. For DOT federally-assisted programs or projects, displacing agencies that lack authority under current State law to comply with the interim final rule shall continue to comply with 49 CFR Part 25 until such authority is obtained. Part 25 will be rescinded on April 2, 1989, by the separate DOT regulatory action published elsewhere in this issue of the **Federal Register**.

changes in the statutory payment limits made by the 1987 Amendments. For the reader's easy reference, the location of these nondiscretionary changes are simply identified below, by subpart, without further discussion. To better enable agencies to relate interim final rule changes to the existing common rule, subpart, section and paragraph references in this preamble are cited in generic form, i.e., a simple dash has been substituted for the CFR part number. Where a nondiscretionary change has *not* been made or a change of another nature has been made, these actions are discussed. There are no changes at this time in Subparts B and C.

Subpart A—General

Section 24.1 Purpose.

A new paragraph (c) has been added to refer specifically to the 1987 Amendments which are being promulgated in the interim final rule. This language will simply help to distinguish the interim final rule from the earlier common rule during this transition period.

Section 24.2 Definitions.

In paragraph 24.2(c)(6)(iii) the dollar amounts have been changed to reflect the new statutory limits for payments under the cited sections.

Subpart D—Payment for Moving and Related Expenses

Section 24.302 Fixed payment for moving expenses—residential moves.

For eligible residential displacees who elect to be reimbursed on the basis of a payment schedule as an alternative to reimbursement for actual moving and related expenses, the 1987 Amendments eliminated the ceiling that had been set for the moving expense payment and the fixed amount for a dislocation allowance. Instead, "an expense and dislocation allowance" has been authorized, in accordance with a schedule established by the lead agency. Historically, the moving expense allowance had been established by each state and then approved and published in the **Federal Register** annually by the Federal Highway Administration. This schedule became the basis for all such alternative payments by other Federal agencies. FHWA intends to develop the schedule from data provided by the State highway agencies as in the past and then publish the schedule as a notice in the **Federal Register**. The current fixed payment schedule was published as a Notice in the **Federal Register** on December 30, 1986 (51 FR 47097) and will remain in effect until April 2, 1989 for those State and local Federal-aid grant recipients that lack authority to comply with the 1987 Amendments or are not required to do so under this interim final rule.

The interim final rule contains language to reflect the statutory elimination of set amounts and to establish the basis for a revised schedule for such moves. The methodology States will use to develop data for the revised schedule will be similar to that used in the past, while at the same time allowing States to take into consideration geographic variables that may affect moving expenses. The schedule is expected to reflect a logical relationship between the eligible expenses to be covered by the dislocation allowance and the probability that such expenses will be incurred by the displaced person or household instead of a fixed amount payable equally to all residential displacements.

Section 24.304 Fixed payment for moving expenses nonresidential moves.

In paragraphs 24.304(a) and 24.304(c) the dollar amounts have been changed to reflect the new statutory minimum and maximum payments. An eligible displaced business retains the option of receiving a payment for actual moving and related expenses so that the change in the new minimum payment level does not reduce the displacee's financial protection under the law. In paragraph 24.304(d), the amount of payment an eligible displaced nonprofit organization may receive has not been changed.

The 1987 Amendments provide an opportunity to review and revise, if necessary, the criteria to be met in determining eligibility for, and the amount of, an "in lieu of moving" payment as an alternative business allowance. As any significant change to the current criteria should be subject to public notice and comment, such changes are not being included in the interim final rule. As the amount of payment for a nonprofit organization is really a product of the current criteria, there is no strong basis for arbitrarily setting a different amount, such as the new statutory minimum, until the feasibility of criteria for payment to such businesses is adequately explored. To apply the new minimum, which could be interpreted as a reduction in benefits, without a corresponding analysis of alternative payment criteria could result in inconsistent treatment of displacees in otherwise similar circumstances. While the entire subject of criteria for all affected displacees under this section will be dealt with in the forthcoming notice of proposed rulemaking, early comments will be accepted on all criteria but are especially invited on the question of criteria for nonprofit organizations.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner—occupants.

In paragraph 24.401(b) the dollar amount has been changed to reflect the new statutory limit for this payment. A new sentence has been added to reflect the changed time limit imposed on payments computed under this section by section 406 of the 1987 Amendments.

Additional language has been included in paragraph 24.401(d) to allow displacing agencies to use an alternative method to determine increased mortgage interest costs. The alternative approach, or "buydown" method, was previously acceptable only for use in computing such costs under the Last Resort Housing provisions in § 24.602 because the method of computing such costs under section 203 of the Uniform Act was set by statute. The 1987 Amendments have now eliminated the statutory "annuity" formula. FHWA has included the "buydown" method in the interim final rule for displacing agencies to elect to use as an alternative for all such computations. Although its application has been widespread in Last Resort Housing situations, some agencies may not be familiar with it nor has it been subject to general notice and comment. As the Congress recognized when it amended section 203 of the Uniform Act, it will be necessary to modify the "annuity" method in order to avoid or reduce "windfall" or unwarranted payments during periods of inflation and high mortgage interest rates. For these reasons, the "buydown" method is included at this time only as a permitted alternative and early comments are invited on it or other possible alternative procedures for computing such costs.

In paragraph 24.401(f) the dollar amount has been changed to reflect the new statutory limit for payment under the cited section.

Section 24.402 Replacement housing payment for 90-day occupants.

In paragraph 24.402(a) the dollar amount has been changed to reflect the new statutory limit for this payment.

In paragraph 24.402(b)(1), the dollar amount and the computation factor have been changed to reflect the new statutory limit for the amount and the time period for financial assistance. The

statement in the law that the computation of a payment under this paragraph to a low-income displaced person shall take into account such person's income is not being specifically addressed in the interim final rule because this statement requires administrative interpretation and any changes in the method of computation is properly subject to public notice and comment. As a practical matter, the current last resort housing provision offers some protection to such displacees.

Paragraph 24.402(c)(1) dealing with the amount of a downpayment has been rewritten to reflect the new statutory limit for such payments and to remove the matching requirement which was eliminated by the 1987 Amendments. This paragraph also sets forth the change under which downpayment assistance may be based on the cost of renting a comparable replacement dwelling.

Also, the language formerly found in paragraph 24.402(c)(2) has been rewritten and placed in Appendix A at 24.402(c). Numbered paragraph 24.402(c)(3), application of payment, has been changed to 24.402(c)(2).

Section 24.403 Additional rules governing replacement housing payments.

In paragraph 24.403(b) the dollar amounts have been changed to reflect the new statutory limits for payments under the cited sections.

Subpart F—Mobile Homes

In §§ 24.503, 24.504 and 24.505(a) the dollar amounts have been changed to reflect the new statutory limits for payment under the cited sections.

Subpart G—Last Resort Housing

Section 24.601(b) Basic rights of persons to be displaced.

For clarity, a sentence has been added at the end of this paragraph to reflect the time limit imposed on payments computed under § 24.401 by section 406 of the 1987 Amendments. This sentence is essentially identical to the sentence added at § 24.401(b) for the same reason.

Appendix A—Additional Information

Section 24.402 Replacement housing payment for 90-day occupants.

The discussion in § 24.402 has been expanded to include the intent of the downpayment assistance provision and guidance on the prudent application of agency discretion.

Section 24.602 Methods of providing replacement housing.

The paragraph permitting the use of the "buydown" method in computing an increased mortgage interest payment has been eliminated as that method has been included as an acceptable alternative method in § 24.401.

Appendix B—Statistical Report Form

In the instructions for completing line 13 of the form, the dollar amounts in the example have been changed to reflect the new statutory limit for the section 204 of the Uniform Act portion of the payment used in the example.

Future Steps

In establishing a Federal lead agency, the 1987 Amendments built upon the earlier governmentwide common rule effort by the Executive Branch which achieved consistency among the almost 20 Federal departments and agencies that are affected by the Uniform Act. However, without specific statutory authority to develop and publish a governmentwide single rule, this earlier effort required each affected Federal agency to take separate, albeit simultaneous, verbatim rulemaking actions. The 1987 Amendments now provide the authority to streamline this process and to have a governmentwide single rule published at a single location in the CFR which is applicable to all Federal programs. The intent of Congress, that "the lead agency rules should provide sufficient direction to preclude the need for the issuance of regulations by other Federal agencies" (H.R. Rep. No. 99–665, 99th Cong., 2d Sess. 92 (1986)), should minimize the burden on State and local agencies. Congress recognized that actual implementation of the 1987 Amendments would probably require a phase-in period to allow for conforming action by State legislatures, if necessary, for federally-assisted programs and therefore set a statutory effective date of no later than April 2, 1989.

It is recognized that many non-Federal agencies whose activities are covered by the Uniform Act will be unable to comply with the 1987 Amendments. This is the reason that the 1987 Amendments in section 418 provided for delay in their effective date. Displacing agencies that are unable to comply with this interim final rule should continue to comply with the provisions of the common Uniform Act rule published on February 27, 1986 (51 FR 7000). The governmentwide common rule will remain in effect, for programs providing Federal financial assistance to displacing agencies, until the date, on or before April 2, 1989, that the 1987 Amendments become mandatory. Displacing agencies that currently are unable to comply with the new provisions added by this interim final rule are encouraged to comply with this interim final rule or with the final rule that will succeed it as soon as they are able to do so. The FHWA has prepared model State enabling legislation that is designed to permit full compliance with the Uniform Act, as amended. Copies are available from the contacts for further information, listed above.

The assurances provision of this interim final rule at § 24.4 has not been changed. The implementation of this provision as to specific programs or projects is entirely the responsibility of the Federal funding agency involved. However, the use of this provision by the Federal funding agency is encouraged to determine which of its grantee agencies are proceeding under the provisions of this interim final rule.

Many States and Federal agencies administering direct Federal activities already have the necessary statutory authority and are eager to implement the 1987 Amendments. This interim final rule permits them to do so. Further, many Federal agencies are able to move toward the single-rule streamlined process now and have done so by rescinding their agency-specific rule and cross referencing today's interim final rule as the governing regulation for their programs as described in the 17-agency common rule published elsewhere in today's **Federal Register**. Other agencies will take this action at a later date but not later than April 2, 1989.

There are several other specific changes in the Uniform Act made by the 1987 Amendments that will be proposed in a notice of proposed rulemaking to be published after the start of the new year. Comments on that rulemaking will be solicited and incorporated into the final Uniform Act regulation.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291 or a significant rule under the regulatory policies and procedures of the Department of Transportation.

The FHWA believes that circumstances warrant the issuance of this rulemaking action without notice or an opportunity for prior public comment. As previously stated, the statutory amendments that are incorporated in this rulemaking action address specific and fixed relocation costs and benefits. The statutory payment limits authorized by the 1987 Amendments are explicit

and require little, if any, administrative interpretation or discretion. For this reason, a period for public comment is unnecessary.

Many States and Federal agencies administering direct Federal activities currently have the necessary statutory authority to implement certain provisions of the 1987 Amendments. To delay the promulgation of the amendments contained in this rulemaking action would deprive many parties from receiving what they are entitled to under the law.

For the foregoing reasons, the FHWA finds good cause to make this regulation effective without prior notice or opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act, 5 U.S.C. 553 (b) and (d). Accordingly, the provisions that are contained in this rulemaking action are effective as provided by the section entitled "Dates."

While the FHWA does not anticipate that there will be any substantive public comment on the general issue of the statutory provisions themselves, there may be some procedural comments on the provisions contained in this interim final rule. For this reason, publication of this interim final rule without an opportunity for prior comment, but with a request for comments following publication is consistent with the Department of Transportation's regulatory policies. Any comments that are submitted specifically to this docket will be fully considered in determining the need for future revisions in conjunction with a notice of proposed rulemaking (NPRM) which will be published separately at a later date and which will address several other provisions mandated by the 1987 Amendments.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. For this reason, a full regulatory evaluation is not required. Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Requirements

Today's rulemaking does not affect any of the sections that contain paperwork requirements subject to review by OMB under Pub. L. 96–511, the Paperwork Reduction Act of 1980. These sections are §§ 24.102(e), 24.103(b), 24.104(c), 24.203(a), 24.203(c), 24.205(b), 24.207(g), and 24.303(b). It remains the responsibility of each affected Federal agency to obtain program-specific OMB approval for reporting requirements contained in this rule.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, Subtitle A, by adding Part 24 as set forth below.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Issued on: December 11, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

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Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note); and 49 CFR 1.48(dd).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate

injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To implement those provisions of the Uniform Relocation Act Amendments of 1987 (Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100–17, 101 Stat. 246) that are explicit and are not subject to administrative discretion or interpretation.

§ 24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State or State agency which acquires the real property or displaces a person (see § 24.2(f)).

(b) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Solely for the purpose of § 24.303, conducted primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe, and sanitary as described in § 24.2(e).

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space. (See Appendix A of this part.)

(3) In an area that is not subject to unreasonable adverse environmental conditions, is not generally less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).)

(5) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.)

(6) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described at § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e).

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if the monthly rent at the replacement dwelling does not exceed the monthly rent at the displacement dwelling, after taking into account any rental assistance which the person receives under this part. If the cost of any utility service is included in either rent, an appropriate adjustment must be made if necessary to ensure that like circumstances are compared. For a person who paid little or no rent before displacement, the market rent of the displacement dwelling may be used when computing costs (see Appendix A of this part, § 24.402(b)(1)).

(iii) Whenever a $22,500 replacement housing payment under § 24.401 or a $5,250 replacement housing payment under § 24.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G of this part, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means.

(d) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(e) *Decent, safe, and sanitary dwelling.* The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply, unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(f) *Displaced person*—(1) *General.* The term "displaced person" means any person (defined at § 24.2(m)) who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of the Agency's acquisition of such real property in whole or in part for a project. This includes any person who moved from the real property as a result of the initiation of negotiations as described at § 24.2(k); or

(ii) As a result of a written order from the acquiring Agency to vacate such real property for the project; or

(iii) As a result of the Agency's acquisition of, or written order to vacate, for a project, other real property

on which the person conducts a business or farm operation. Eligibility as a displaced person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205 and moving expenses under § 24.301, § 24.302, or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as a displaced person under this part.

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)); or

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project; or

(iii) A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency in accordance with any guidelines established by the Federal agency funding the project (see also Appendix A of this part); or

(iv) A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or

(v) A person who, after receiving a notice of relocation eligibility (described at § 24.203), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or

(vi) An owner-occupant who voluntarily sells his or her property (as described at § 24.101(a) in Appendix A of this part) after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to this part; or

(vii) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or

(viii) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of the Interior under Pub. L. 93–477 or Pub. L. 93–303.

(g) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(h) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(i) *Federal agency.* The term "Federal agency" means any department, agency, or instrumentality in the Executive Branch of the Government, any wholly owned Government corporation, and the Architect of the Capitol, the Federal Reserve Banks and branches thereof.

(j) *Federal financial assistance.* The term "Federal financial assistance" means any Federal grant, loan, or contribution, except a Federal guarantee or insurance.

(k) *Initiation of negotiations.* The term "initiation of negotiations" means the delivery of the initial written offer by the Agency to the owner or the owner's representative to purchase real property for a project for the amount determined to be just compensation, unless applicable Federal program regulations specify a different action to serve this purpose. However:

(1) If the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the date the person moves from the property. (See also § 24.505(c).)

(2) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96–510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Owner of displacement dwelling.* A displaced person is considered to have met the requirement to own a displacement dwelling if the person holds any of the following interests in real property acquired for a project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraphs (l) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(m) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(n) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(o) *State.* The term "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands, or a political subdivision of any of these jurisdictions.

(p) *State agency.* The term "State agency" means any department, agency or instrumentality of a State or of a political subdivision of a State, or two or more States, or of two or more political subdivisions of a State or States.

(q) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(r) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894; 42 U.S.C. 4601), and amendments thereto.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A State agency's assurances under section 305

of the Uniform Act must contain specific reference to the State law which the Agency believes provides an exception to sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally assisted programs or projects.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations.

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part shall be in compliance with all applicable laws and implementing regulations, including the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (Pub. L. 93–234).

(l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* A person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly determine the person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the

official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any Agency acquisition of real property for a Federal or federally assisted project, except:

(1) Voluntary transactions that meet the criteria specified in Appendix A of this part, § 24.101(a).

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring Agency does not have the authority to acquire the property through condemnation.

(b) *Less-than-full-fee interest in real property.* The requirements of this Subpart apply to the acquisition of a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See also Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For federally-assisted projects the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expeditious acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal and invitation to owner.* Before the initiation of negotiations, the real property shall be appraised and the owner or the owner's designated representative shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and (1) discuss its offer to purchase the property including the basis for the offer of just compensation, and (2) explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall (1) pay the agreed purchase price to the owner, or (2) in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. An uneconomic remnant is a remaining part of the property in which the owner is left with an interest that the Agency determines has little or no utility or value to the owner.

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Definition of appraisal.* An appraisal is a written statement independently and impartially prepared by a qualified appraiser setting forth an

opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(b) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, the appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(c) *Influence of the project on just compensation.* To the extent permitted by applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(d) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(n)) of the retained improvement.

(e) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(f) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is $2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(n).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to

reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(a) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(b) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(c) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

Nothing in this part shall prevent a person, after being informed of the right to receive just compensation, based on an appraisal of the real property, from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Agency. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the Agency from such obligation.

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(f).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the Agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to eligibility for, or the amount of, any relocation payment for which the person may be eligible.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice*—(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the Agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(c)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in § 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. § 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because

of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in monthly housing costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation assistance advisory services.

(a) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527), and offers the services described in paragraph (b) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer the services to such person.

(b) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(1) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(2) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(i) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(ii) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (c) and (e).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(iv) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to persons to be displaced.

(c) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in this part. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expeditious payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise

entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law.

Subpart D—Payment for Moving and Related Expenses

§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(f)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 24.2(f)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for (i) planning the move of the personal property, (ii) moving the personal property, and (iii) installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, as the Agency determines to be

reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business (except an outdoor advertising display business or a nonprofit organization) may be eligible to choose a fixed payment in lieu of a payment for actual moving and related expenses. The payment shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency demonstrates that it will not suffer a substantial loss of its existing patronage; and

(2) The business is not part of a commercial enterprise having another establishment, which is not being acquired by the Agency, and which is under the same ownership and engaged in the same or similar business activities. (For purposes of this part a remaining business facility that did not contribute materially to the income of the displaced person during the 2 taxable years prior to displacement shall not be considered "another establishment."); and

(3) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(d)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(h) may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than $1,000 nor more than $20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses of $2,500, if the Agency determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Agency.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location; or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 24.303(a)(3); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within 1 year after the later of the following dates:

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court, or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed $22,500. (See also § 24.403(b).) The payment under this section is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs to be incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.*—(1) *Determination of price differential.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(e)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency may use either the "annuity" method or the "buydown" method to determine the amount to be paid to a displacee under § 24.401(b)(2). The "annuity" method provides for a payment based upon the present value of the increase in interest costs that results when the mortgage interest rate on the replacement dwelling exceeds the mortgage interest rate on the displacement dwelling. The "buydown" method provides a lump sum payment which could be used to reduce the amount of a mortgage on the replacement dwelling to an amount which could be amortized with the same repayment schedule as that remaining for the mortgage(s) on the displacement dwelling. Payments under either method include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Once the Agency determines which method is to be used, that method must be applied in like manner throughout the Agency's program or projects except that, in the case of a Federal agency, the method selected may differ from State to State as long as the same method is used throughout its programs or projects in any given State. Paragraphs (d)(1)–(5) of this section shall apply to use of the annuity method:

(1) The payment shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(3) The interest charge on the new mortgage shall not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) The present value of the increased interest costs shall be computed at the prevailing interest rate paid on savings deposits by commercial banks in the area in which the replacement dwelling is located.

(5) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area; and

(iii) The Agency determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401(a) but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed $5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed $5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.*—(1) *Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed $5,250 for rental assistance. (See also § 24.403(b).) Such payment shall be 42 times the amount obtained by subtracting the average monthly rent of the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency (for an owner-occupant or tenant who pays little or no rent, the average cost for rent shall be the fair market rent; see Appendix A of this part, Subpart E), from the lesser of:

(i) The monthly rent for a comparable replacement dwelling; or

(ii) The monthly rent for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Utility services.* Any utility service which is included in the monthly rent for either the displacement dwelling or the comparable replacement dwelling must be included when computing the rental assistance payment. Appropriate adjustments to reflect the cost of utility services shall be made, if necessary to ensure that like circumstances are compared.

(3) *Manner of disbursement.* The payment under this section shall be disbursed in a lump sum, unless the Agency determines on a case-by-case basis, for good cause, that the payment should be made in installments.

(c) *Downpayment assistance payment.*—(1) *Amount of payment.* A displaced person eligible for a rental assistance payment may, in lieu of accepting such rental assistance payment, elect to apply that computed payment to a downpayment, including related incidental expenses, for a replacement dwelling. At the Agency's discretion, an eligible displaced tenant or owner who does not meet the 180-day ownership/occupancy requirement may receive a downpayment assistance payment not to exceed $5,250, except that an eligible displaced owner may not receive a downpayment assistance payment which exceeds the payment that such person would otherwise have received under § 24.401(b) had the 180-day eligibility criterion been met. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. In the case of a Federal agency, the method selected may differ from State to State as long as the same method is used throughout its programs or projects in any given State. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(b) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c)).

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(c)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(b)(2)(i)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Applicability of last resort housing.* Whenever a $22,500 replacement housing payment under § 24.401 or a $5,250 replacement housing payment under § 24.402 would be insufficient to ensure that a comparable replacement dwelling is available on a timely basis to a person, the Agency shall provide additional or alternative assistance under the last resort housing provisions at Subpart G, which may include increasing the replacement housing payment so that a replacement dwelling is within the displaced person's financial means as described in § 24.2(c)(6)).

(c) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(e).

(d) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

(1) Purchases a dwelling; or

(2) Purchases and rehabilitates a substandard dwelling; or

(3) Relocates a dwelling which he or she owns or purchases; or

(4) Constructs a dwelling on a site he or she owns or purchases; or

(5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.

(e) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in this part for a reason beyond his or her control, including:

(1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the Agency; or

(2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(f) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the payment computed under § 24.401 or § 24.402(c).

(g) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile homesite who meets the basic eligibility requirements of this part. Except as modified by this subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D of this part and a replacement housing payment in accordance with Subpart E of this part to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

A tenant or owner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her personal property on an actual cost basis in accordance with § 24.301 or, as an alternative, on the basis of a fixed payment under § 24.302. (However, if the mobile home is not acquired but the owner obtains a replacement housing payment under one of the circumstances described at § 24.503(c), the owner is not eligible for payment for moving the mobile home.) Paragraphs (a), (b) and (c) of this section apply to payments for actual moving expenses under § 24.301:

(a) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(b) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be practical to relocate it, the reasonable cost of such repairs and/or modifications is reimbursable.

(c) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed $22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not actually acquired, but the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payments for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed $5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(c).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either $22,500 or $5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling.* (1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of (i) the value of the mobile home, (ii) the cost of any necessary repairs or modifications, and (iii) the estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under this part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part, he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Last Resort Housing

§ 24.601 Applicability.

(a) *Basic determination to provide last resort housing.* A person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to the person. Whenever an Agency determines that a replacement housing payment under Subpart E would not be sufficient to provide a comparable replacement dwelling on a timely basis to the person, the Agency is authorized to take appropriate measures under this Subpart to provide such a dwelling. The Agency's obligation to ensure that a comparable replacement dwelling is available shall be met when such a dwelling, or assistance necessary to provide such a dwelling, is offered under the provisions of this Subpart.

(b) *Basic rights of persons to be displaced.* The provisions of this Subpart do not deprive any displaced person of any rights the person may have under the Uniform Act or any implementing regulations. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under the procedures in this Subpart (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible. A 180-day homeowner-occupant who is eligible for a payment under § 24.401 is entitled to a reasonable opportunity to purchase a comparable replacement dwelling. However, the actual amount of assistance shall be limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling or the date the person is initially offered a comparable replacement dwelling, whichever is later. (See Appendix A of this part, § 24.601(b).)

§ 24.602 Methods of providing replacement housing.

Agencies shall have broad latitude in implementing this Subpart, but implementation shall be on a reasonable cost basis. The methods of providing last resort housing include, but are not limited to:

(a) Rehabilitation of and/or additions to an existing replacement dwelling.

(b) The construction of a new replacement dwelling.

(c) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(d) A replacement housing payment in excess of the limits set forth in § 24.401 or § 24.402. A rental assistance subsidy under this Subpart may be provided in installments or in a lump sum.

(e) The relocation and, if necessary, rehabilitation of a dwelling.

(f) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with, a displaced person.

(g) The removal of barriers to the handicapped.

Appendix A to Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2(c) Definition of comparable replacement dwelling.

The requirement in § 24.2(c)(2) that a comparable replacement dwelling be "functionally similar" to the displacement dwelling means that it must perform the same function, provide the same utility, and be capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

Generally, functional similarity is an objective standard, reflecting the range of purposes for which the various features of a dwelling may physically be used. However, in determining whether a replacement dwelling is functionally similar to the displacement dwelling, the Agency may consider reasonable trade-offs in specific features when the replacement unit is "equal or better than" the displacement dwelling.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequentially less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally similar" to a larger but very run-down substandard displacement dwelling.

Section 24.2(c)(5) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(f)(2) Persons not displaced.

Section 24.2(f)(2)(iii) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations.

This section of the part provides a special definition for acquisitions and displacements under Pub. L. 96–510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under this part that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under this part is computed.

Section 24.9(c) Reports.

This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101(a) General.

The provisions of this subpart apply to real property acquisition for the following types of Federal or federally-assisted programs or projects:

(1) Those carried out under the threat of eminent domain, including amicable agreements under the threat of such power.

(2) Where there is an intended, planned, or designated project area, and all or substantially all of the property within that area is eventually intended to be acquired. Such acquisitions are subject to the requirements of this subpart whether or not the Agency has or intends to use the power of eminent domain.

Provided it does not conflict with the foregoing, an Agency may determine that the requirements of this subpart do not apply to an acquisition if all of the following conditions are present:

(1) No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area.

(2) The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is eventually to be acquired.

(3) The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed.

Acquisitions meeting the foregoing criteria are classified as voluntary transactions. The essence of a voluntary transaction is the conditions surrounding the transaction, not the type of transaction itself. A voluntary transaction may involve a donation, an exchange, or a market sale, if the transaction is without compulsion on the part of the Agency.

In those situations where an Agency wishes to purchase more than one site within a geographic area on a "voluntary transaction" basis, it is intended that all owners be treated similarly.

Although the displacement of the owner-occupant of the real property as a result of a voluntary transaction is not subject to this part (see § 24.2(f)(2)(vi)), the displacement of a tenant-occupant of the real property is subject to this part.

Section 24.101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this

section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement.

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession.

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair Rental.

Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value * * * to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103(b) Standards of appraisal.

In paragraph (b)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(c) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(f) Conflict of interest.

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, the part provides that the same person may both appraise and negotiate an acquisition, if the value is $2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at $2,500, or less.

Section 24.104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses incidental to transfer of title to the agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Section 24.108 Donations.

This section provides that the Agency must obtain an appraisal and offer the full amount of just compensation due unless the owner, after being fully informed of such policies, releases the Agency from these obligations.

Subpart C—General Relocation Requirements

Section 24.204(a) Availability of comparable replacement dwelling before displacement.

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, this part requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this part is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(b)(2)(iii) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.206 Eviction for cause.

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements, there is no basis for changing that determination.

Section 24.207 General requirements claims for relocation payments.

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

The provision in § 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

Section 24.402 Replacement housing payment for 90-day occupants.

The provision in § 24.402(b)(1) to use the fair market rent for the displacment dwelling is intended to address the computation of payments for homeowner-occupants (who, of course, paid no rent before displacement) and those unusual situations in which a tenant is paying an unreasonably low rent and a payment based on such rent would provide a windfall. The provision is not intended to apply in those situations where the use of the fair market rent would result in a hardship because of the displaced person's income or other special circumstances.

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the $5,250 statutory maximum. This does not mean, however, that such agency discretion may be exercised in a selective or indiscriminate fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the agency's programs or projects.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment

actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the agency determines is necessary.

Subpart F—Mobile Homes

Section 24.503(c) Replacement housing payment for 180-day mobile homeowner-occupants.

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

Subpart G—Last Resort Housing

Section 24.601(a) Basic determination to provide last resort housing.

No additional guidelines for implementation are included in the part because additional requirements would tend to limit the flexibility considered necessary or appropriate to provide comparable replacement housing on a timely basis.

Section 24.601(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of displacement dwelling" at § 24.2(1). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.602 Methods of providing replacement housing.

The use of cost effective means of providing replacement housing is implied throughout the part. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are allowed, they should be cost-effective.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information which may be collected from Agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, as amended (herein called the "Uniform Act").

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1–September 30, for the year in which the report is required.

3. *Where and when to submit report.* Submit an original and two copies of this report to (*Name and Address of Federal Agency*) as soon as possible after September 30, but *NOT LATER THAN NOVEMBER 15,* of the year in which the report is due.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the payment was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in parentheses in Part B indicate the section of the Uniform Act that authorizes the cost.

PART A. Persons displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who were permanently displaced during the report year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, *not* by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

PART B. Relocation payments and expenses

Columns (a) and (b). Report in Column (a) the number of claims approved during the report year. Report in Column (b) the total amount represented by the claims reported in Column (a).

Line 10b, Column (b). Report in Column (b) the amount of increased mortgage interest costs that was included in the total amount approved for Replacement Housing Payments for Homeowners on Line 10a, Column (b). Leave Line 10b, Column (a) blank.

Line 13. Report in Column (a) the number of households displaced by project or program activities which were provided assistance in accordance with section 206(a) of the Uniform Act. Report in Column (b) the total financial assistance under section 206(a) allocable to the households reported in Column (a). (If a household received financial assistance under section 203 or section 204 as well as under section 206(a) of the Uniform Act, report the household as a claim in Column (a), but in Column (b) report only the amount of financial assistance allocable to section 206(a). For example, if a tenant-household receives a payment of $7,000 to rent a replacement dwelling, the sum of $5,250 shall be included on Line 11, Column (b), and $1,750 shall be included on Line 13, Column (b).)

Line 14. Report on Line 14 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under section 205 of the Uniform Act.

PART C—Real property acquisition subject to Uniform Act

Line 16, Columns (a) and (b). Report in Column (a) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (b) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved. Leave Line 17, Column (b), blank.

PART D—Relocation appeals filed during report year

Line 18. Report on Line 18 the total number of relocation appeals filed during the report year by a person alleging the Agency failed to properly determine the person's eligibility for, or the amount of, a relocation payment required under these regulations.

BILLING 4910-22-M

Form Approved
OMB No: 2105-0508
Exp. Date: 6/30/89
Attachment
Appendix B

Model Uniform Act Report

Part A. Persons Displaced by Activities Subject to the Uniform Act During Report Year

	Item	Total (a)	No. of Owners (b)	No. of Tenants (c)
1	Households *(Families and individuals)*			
2	Businesses and Nonprofit Organizations			
3	Farms			

Part B. Relocation Payments and Expenses Under Uniform Act During Report Year

	Item		No. of Claims (a)	Amount (b)
4	Payments for Moving Expenses for Households	Actual Expenses (Section 202(a))		
5		Fixed Payment Including Dislocation Allowance (Section 202(b))		
6	Payments for Moving Expenses for Business and Nonprofit Organizations	Actual Expenses (Section 202(a))		
7		Payment in Lieu of Actual Expenses (Section 202(c))		
8	Payment for Moving Expenses for Farms	Actual Expenses (Section 202(a))		
9		Payment in Lieu of Actual Expenses (Section 202(c))		
10a				
10b	Amount on Line 10a Attributable to Increased Mortgage Interest Costs			
11	Rental Assistance Payment *(Tenants and Certain Others) (Section 204(1))*			
12	Downpayment Assistance *(Tenants and Certain Others) (Section 204(2))*			
13	Housing Assistance as Last Resort *(Section 206(a))*			
14	Relocation Advisory Assistance and Services Cost *(Section 206)*			
15	Total *(Sum of Lines 4 through 14 Excluding Line 10b)*			

Part C. Real Property Acquisition Subject to Uniform Act During Report Year

	Item	No. of Parcels (a)	Compensation (b)
16	Total Parcels Acquired		
17	Total Parcels Acquired by Condemnation Included on Line 16 *(where price disagreement was involved)*		

Part D. Relocation Grievances Filed During Report Year

		Total No.
18	Relocation Grievances Filed in Connection with Project / Program	

[FR Doc. 87-28855 Filed 12-16-87; 8:45 am]
BILLING CODE 4910-22-C

DEPARTMENT OF AGRICULTURE

7 CFR PART 21

DEPARTMENT OF ENERGY

10 CFR PART 1039

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR PART 1208

DEPARTMENT OF COMMERCE

15 CFR PART 11

TENNESSEE VALLEY AUTHORITY

18 CFR PART 1306

DEPARTMENT OF LABOR

29 CFR PART 12

DEPARTMENT OF DEFENSE

32 CFR PART 259

DEPARTMENT OF EDUCATION

34 CFR PART 15

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR PART 904

VETERANS' ADMINISTRATION

38 CFR PART 25

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 4

GENERAL SERVICES ADMINISTRATION

41 CFR PART 105-51

DEPARTMENT OF THE INTERIOR

41 CFR PART 114-50

DEPARTMENT OF JUSTICE

41 CFR PART 128-18

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR PART 25

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR PART 15

DEPARTMENT OF TRANSPORTATION

49 CFR PART 25

Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

AGENCIES: Department of Agriculture; Department of Commerce; Department of Defense; Department of Education; Department of Energy; Department of Health and Human Services; Department of the Interior; Department of Justice; Department of Labor, Department of Transportation; Environmental Protection Agency; Federal Emergency Management Agency; General Services Administration; National Aeronautics and Space Administration; Pennsylvania Avenue Development Corporation; Tennessee Valley Authority; Veterans' Administration.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule provides for the partial implementation of the Uniform Relocation Act Amendments of 1987 (1987 Amendments) (Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat. 132). The 1987 Amendments make several changes to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), 42 U.S.C. 4601-4655 (1982). One of the primary purposes of the 1987 Amendments was to establish a governmentwide single rule, published at a single location in the Code of Federal Regulations (CFR) to implement the provisions of the Uniform Act. The 1987 Amendments become fully applicable on April 2, 1989. This interim final rule is intended to do two things. First, it provides a transition from the existing governmentwide common rule on the Uniform Act, published at 17 separate places in the Code of Federal Regulations to a governmentwide single rule appearing at 49 CFR Part 24. Secondly, it provides a means whereby Federal programs, that are able to implement the explicit, nondiscretionary provisions of the 1987 Amendments, may do so. A more detailed discussion of the implementation of the 1987 Amendments is contained in the U.S. Department of Transportation (DOT) interim final rule which appears elsewhere in this **Federal Register**, and in DOT's recent notice of regulatory intent on this subject at 52 FR 45667.

DATES: The effective date of the interim final rule and the date by which comments must be received are as stated in the agency specific preambles.

ADDRESSES: See individual agencies below.

FOR FURTHER INFORMATION CONTACT: See individual agencies below.

SUPPLEMENTARY INFORMATION: Currently 17 Federal agencies have codified in 17 different places in the Code of Federal Regulations (CFR) a governmentwide verbatim common rule to implement the Uniform Act. This common rule was published in the February 27, 1986 **Federal Register** (51 FR 6999-7040). This document removes the text of this common rule from all but one of the 17 places by no later than April 2, 1989. The actual implementation date will vary from agency to agency depending upon program authority and administrative need.

The instrument for this removal (rescission) is an interim final rule with a request for public comments. An interim final action is used instead of a proposed action because the Department of Transportation (DOT), the lead agency for the Uniform Act, interprets the 1987 Amendments to call for a single governmentwide rule codified in one instead of 17 places in the Code of Federal Regulations. This interpretation is based upon the language of the Uniform Act and its legislative history. Section 213(a) of the Uniform Act, as amended, directs the lead agency to "develop, publish, and issue * * * such regulations as may be necessary to carry out this Act" with the "active participation" of the Department of Housing and Urban Development and other concerned Federal agencies. Congress intended that "the lead agency rules should provide sufficient direction to preclude the need for the issuance of regulations by other Federal agencies", in order to "insure uniformity and minimize burdens on State and local agencies", H.R. Rep. 99-665, 99th Cong. 2d Sess. 92 (1986); and that "there be a single uniform set of Federal regulations, so that State and local governments do not have to bear the administrative expense of following multiple sets of Federal regulations". 133 Cong. Rec. S1560 (daily ed. February 3, 1987).

Therefore, in the future all changes to the single governmentwide rule could be proposed and then made by DOT, with participation of, but no action by, the other affected Federal agencies. This is consistent with the statute and the expressed intent of Congress in the House Report, would simplify implementation of the Uniform Act, and would reduce administrative burdens upon Federal agencies when revisions to the Uniform Act regulations are proposed. However, this approach would mean that other Federal agencies will no longer be publishing their own full text rules implementing the Uniform

Act in their Chapter of the Code of Federal Regulations, and State or local agencies receiving Federal financial assistance from such agencies would have to refer to the single governmentwide rule at 49 CFR Part 24 to find the full text of the regulations implementing the Uniform Act. Public comments are requested on this approach. Subject to consideration of any comments received, this interim final rule will become the final rescission and a Notice of such final action will appear in the **Federal Register**.

Also, this document inserts for all agencies other than DOT in their respective parts of the CFR merely a cross reference to the full text rule appearing in the Department of Transportation's part of the CFR at 49 CFR Part 24. The instrument for this replacement is an interim final rule with a request for public comments. An interim final action is used versus a proposed action to take immediate advantage of those benefits of the new statute which do not require discretion by the Federal Government. This document provides for a transition period to allow those Federal programs that are able to take immediate advantage of the explicit, non-discretionary benefits provided by the new law to do so, while enabling other Federal programs to continue operating under the common rule.

Subject to consideration of any comments received, this interim final rule will become final and a Notice of such final action will appear in the **Federal Register**. In this document, each of the 16 affected agencies (besides DOT) is indicating appropriate effective dates (no later than April 2, 1989) for this replacement for each of their programs.

For a more detailed discussion of the entire rulemaking approach (including a DOT notice of proposed rulemaking—to reflect provisions of the new statute which require discretion by the Federal Government—to appear later), see DOT's interim final rule with a request for public comments which appears elsewhere in this **Federal Register**. In addition, see DOT's recent notice of regulatory intent on this subject at 52 FR 45667.

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. Some of the changes in the 1987 Amendments are administrative or procedural, which should result in savings to Federal, State, and local agencies in administering the Uniform Act. Other changes alter benefit levels, which should result in a modest increase in amounts paid under the Uniform Act.

However, we do not believe that the regulations will have an annual economic effect of $100 million or more or the other effects listed in the Order. For this reason, we have determined that these regulations are not a major rule within the meaning of the Order.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact on a substantial number of small entities", an analysis be prepared describing the rule's impact on small entities and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities.

The provisions of the Uniform Act which provide the benefits covered by the proposed rule have not changed substantially. The primary impact of the 1987 Amendments is expected to be an increase in benefits provided to small businesses, the elimination of unnecessary administrative requirements imposed on State and local agencies, and the consequent reduction of burden on those affected entities.

Paperwork Reduction Act

This interim final rule does not contain or impose any new or revised collection of information requirements subject to the Paperwork Reduction Act, other than those already approved. If any such requirements are subsequently proposed in implementing the 1987 Amendments, they will be submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act, Pub. L. 96-511.

DEPARTMENT OF AGRICULTURE

7 CFR Part 21

DATES: The amendment to § 21.1 is effective January 19, 1988. The revision of Part 21 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Mr. Frank Gearde, Jr., Director, Office of Operations, United States Department of Agriculture, Room 113-W, Administration Building, 14th and Independence Avenue, SW, Washington, DC, 20250. Comments will be available for review at the above address from 9:00 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Frank W. Bright, Realty Specialist, Office of Operations, United States Department of Agriculture, Room 1566-South Building, 14th and Independence Avenue, SW, Washington, DC, 20250, Area Code 202, Telephone No. 447-5225. Office hours Monday through Friday from 8:00 a.m. to 4:30 p.m.

List of Subjects in 7 CFR Part 21.

Real property acquisition, Relocation assistance.

Title 7 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, D.C., November 24, 1987.

John J. Franke, Jr.,

Assistant Secretary for Administration.

PART 21—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 21 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

2. Section 21.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 21.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this section is listed below:

Direct federal activities.....January 19, 1988.
Federally-assisted activities...as soon as state law permits, but no later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those

activities which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 21 is revised to read as set forth below:

PART 21—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 231, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 21.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C 4601 note) are set forth in 49 CFR Part 24.

DEPARTMENT OF ENERGY

10 CFR Part 1039

DATES: The amendment to § 1039.1 is effective January 19, 1988. The revision of Part 1039 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to: Office of Project and Facilities Management, United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Donald G. Trost, MA–222, Chief, Real Property Branch, Real Property and Facilities Management Division, United States Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–1191, John Herrick, Esq. GC–34, United States Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585 (202) 586–6905.

List of Subjects in 10 CFR Part 1039

Real property acquisition, Relocation assistance.

Title 10 of the Code of Federal Regulations is amended as set forth below.

Lawrence F. Davenport,

Assistant Secretary, Management and Administration.

PART 1039—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 1039 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 1039.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 1039.1 Purpose and Applicability.

(a) *Purpose.*

* * * * *

(b) *Applicability.* (1) After January 19, 1988, the Department of Energy will be able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) and will be governed by implementing regulations set forth in 49 CFR Part 24.

(2) Until April 2, 1989, the provisions of this part are applicable only to those program activities which were undertaken prior to (effective date of this section) and which, therefore, were unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, (42 U.S.C. 4601 note).

3. Part 1039 is revised to read as set forth below:

PART 1039—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 1039.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1208

DATES: This revision of Part 1208 is effective January 19, 1988. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Facilities Management Office, Code NXG, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Gitta Haber, 202–453–1958.

List of Subjects in 14 CFR Part 1208

Uniform relocation assistance, Real property, Relocation, Federally assisted programs, Housing, Real property acquisition, Relocation requirements, Replacement housing, Mobile homes, Moving and related expenses, Relocation assistance.

Title 14 of the Code of Federal Regulations is amended by revising Part 1208 as set forth below.

November 23, 1987.

James C. Fletcher,

Administrator.

PART 1208—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 1208.1 Uniform Relocation Assistance and Real Property Acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act

of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 24 CFR Part 24.

DEPARTMENT OF COMMERCE

[Docket No. 71159–7259]

15 CFR Part 11

DATES: The amendment to § 11.1 is effective January 19, 1988. The revision of Part 11 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to: Office of Administrative Services Management, United States Department of Commerce, Room 6319, HCHB, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mary DiGiulian, Director, Office of Administrative Services Management, United States Department of Commerce, Washington, DC 20230 (202–377–0884).

ADDITIONAL SUPPLEMENTARY INFORMATION: For federally assisted activities funded by the Department of Commerce, compliance with the 1987 Amendments and government-wide implementing regulation at 49 CFR Part 24 depends upon the legal authority possessed by the recipient of the Federal assistance. Therefore, the date that the Department's program activities become subject to the government-wide regulation is the date the recipient of Federal assistance is legally able to comply, but not later than April 2, 1989.

The collection of information requirements contained in this rule have been approved under OMB No. 0605–0020.

List of Subjects in 15 CFR Part 11

Real property acquisition, relocation assistance, reporting and recordkeeping requirements.

Title 15 of the Code of Federal Regulations is amended as set forth below.

Hugh L. Brennan,

Director, Office of Procurement and Administrative Services.

PART 11—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 11 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 11.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 11.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those recipients of Federal assistance who are able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. Such recipients will be governed by 49 CFR Part 24 as soon as they are legally able to comply but not later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those recipients of Federal assistance who are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 11 is revised to read as set forth below:

PART 11—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 11.1 Uniform relocation and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1306

DATES: The amendment to § 1306.1 in amendatory instruction 2 is effective January 19, 1988. The amendments in amendatory instructions 3 and 4 are effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESS: Comments should be sent to: Edward S. Christenbury, General Counsel, Tennessee Valley Authority, E11 B33, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Comments received will be available for public inspection at Technical Library, Tennessee Valley Authority, E2 B7, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, from 8:00 a.m. to 4:45 p.m. Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: James E. Fox, Deputy General Counsel, Tennessee Valley Authority, E11 B36, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, 615–632–4151.

ADDITIONAL SUPPLEMENTARY INFORMATION: Titles I and II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) (Uniform Act, as amended) will govern relocation assistance by TVA; and relocation assistance under those titles will be governed by implenting regulations set forth in Subpart A and Subparts C through G of 49 CFR Part 24.

The Tennessee Valley Authority (TVA) has determined that it is able to comply expeditiously with the relocation provisions of the 1987 Amendments, and with Subpart A and Subparts C through G of the government-wide interim final rule on this subject, published by the Department of Transportation (DOT) as 49 CFR Part 24, elsewhere in todays' **Federal Register.** Therefore, as of the effective date of this regulation, TVA programs will be governed by those portions of the DOT regulation. TVA is not adopting Subpart B of the DOT regulation concerning real property acquisition because section 213(c) of the Uniform Act, as amended, is applicable to TVA as to the DOT relocation assistance regulations implementing Titles I and II but not to the DOT real property acquisition regulations implementing Title III of the Uniform Act, as amended.

The DOT rule published elsewhere in today's **Federal Register** is basically the same as the common relocation rule that was adopted by 17 Federal departments and agencies on February 27, 1986 (51 FR 7000) (except for certain

nondiscretionary changes contained in the 1987 Amendments). The primary purpose of this rulemaking action is to enable all agencies to cross reference to a single government-wide rule and to permit compliance with nondiscretionary provisions of the 1987 Amendments. TVA did not adopt that government-wide prior common rule, but has been operating under similar relocation rules at 18 CFR Part 1306. However, as a result of the 1987 Amendments, section 213 of the Uniform Act, as amended, now requires that all Federal agencies use a single government-wide regulation in implementing the Uniform Act, as amended, except as noted above with respect to TVA. Further, section 213(c) of the Uniform Act, as amended, now specifically provides that the government-wide relocation regulation implementing Titles I and II of the Uniform Act, as amended, shall apply to TVA.

Because of the specific language of section 213(c) and because this rulemaking action does not result in any material change in TVA's regulations applicable to, and its interpretation of, Titles I and II of the Uniform Act, as amended, TVA finds good cause that prior notice or an opportunity for prior comments is unnecessary and therefore makes this rule effective as an interim final rule without such prior notice or opportunity for prior comment. However, comments are invited on this change.

List of Subjects in 18 CFR Part 1306

Real property acquisition, Relocation assistance.

Title 18 of the Code of Federal Regulations is amended as set forth below.

Part 1306—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

1. The authority citation for Part 1306 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note); 48 Stat. 58, as amended (16 U.S.C. 831–831dd).

2. Section 1306.1 is revised to read as follows. This amendment is effective January 19, 1988.

§ 1306.1 Purpose and applicability.

(a) *Purpose.* The purpose of the regulations and procedures in this Subpart A is to implement Uniform Relocation Assistance and Real Property acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, Stat. 246–256, 42 U.S.C. 4601 note) (Uniform Act, as amended).

(b) *Applicability.* (1) Titles I and II of the Uniform Act, as amended, govern relocation assistance by TVA. For TVA program activities undertaken after January 19, 1988, relocation assistance under those titles will be governed by implementing regulations set forth in Subpart A and Subparts C through G of 49 CFR Part 24, in lieu of sections 1306.2 through 1306.17 and 1306.23 of this part.

(2) For program activities undertaken prior to January 19, 1988, relocation assistance will (until April 2, 1989) be governed by §§ 1306.2 through 1306.17 and § 1306.23.

(3) Regulations and procedures for complying with the real property acquisition provisions to Title III of the Uniform Act, as amended, are set forth in this part.

3. Section 1306.1(b) is revised to read as follows. This amendment is effective April 2, 1989.

§ 1306.1 Purpose and applicability.

* * * * *

(b) *Applicability.* (1) Titles and I and II of the Uniform Act, as amended, govern relocation assistance by TVA. For TVA program activities undertaken after April 1, 1989, relocation assistance under those titles will be governed by implementing regulations set forth in Subpart A and Subparts C through G of 49 CFR Part 24.

(2) Regulations and procedures for complying with the real property acquisition provisions of Title III of the Uniform Act, as amended, are set forth in this part.

§§ 1306.2 through 1306.17 [Removed]; §§ 1306.18 through 1306.22 [Redesignated as §§ 1306.2 through 1306.6]

4. Sections 1306.2 through 1306.17 and 1306.23 are removed and §§ 1306.18 through 1306.22 are redesignated as §§ 1306.2 through 1306.6. This amendment is effective April 2, 1989.

W.F. Willis,

General Manager.

DEPARTMENT OF LABOR

29 CFR Part 12

DATES: The amendment to § 12.1 is effective January 19, 1988. The revision of Part 12 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Office of the Assistant Secretary for Administration and Management, Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. The public may inspect all comments received at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Joseph McGovern, Division of Space and Telecommunications Management, Room S–1513. Telephone (202) 523–6401. (This is not a toll free number).

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Labor is adopting interim final regulations required by the 1987 Amendments. These regulations provide for a phased rescission of the substantive portions of Part 12, and substitute a cross-reference to the Department of Transportation regulations at 49 CFR Part 24, which, after April 2, 1989, will be the only regulations implementing the Uniform Act. For federally assisted activities funded by the Department, compliance with the 1987 Amendements depends upon the legal authority possessed by the recipient of Federal assistance. Therefore, the implementation date for the Federal assistance programs funded by the Department is as soon as the recipient of the assistance is able to comply, but not later than April 2, 1989.

List of Subjects in 29 CFR Part 12

Acquisition of real property, relocation assistance.

Title 29 of the Code of Federal Regulations is amended as set forth below.

Dennis E. Whitfield,

Deputy Secretary of Labor.

PART 12—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERALLY AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 12 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 12.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated

(a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 12.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this section is as soon as possible but not later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those programs which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 12 is revised to read as set forth below:

PART 12—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 12.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

DEPARTMENT OF DEFENSE

32 CFR Part 259

DATES: The amendment to § 259.1 is effective January 19, 1988. The revision of Part 259 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Mr. Jerome Liess, Department of the Army, Office of the Chief of Engineers, Room 5132, Pulaski Building, 20 Massachusetts Avenue NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Jerome Liess, telephone number (202) 272–0517.

ADDITIONAL SUPPLEMENTARY INFORMATION: Part 259 is amended and revised in the following manner. The provisions of the interim final rule found at 49 CFR Part 24 are effective 30 days after publication in the **Federal Register** for Department of Defense directly funded programs and as soon as possible but not later than April 2, 1989 for Department of Defense federally assisted programs. After April 2, 1989 all direct federal and federally assisted programs will be covered by the final rules. The procedures for processing of applications for assistance and appeals under the Act remain the same as under existing regulations.

List of Subjects in 32 CFR Part 259

Real property acquisition, Relocation assistance, Relocation requirements, Payments for moving and related expenses, Replacement housing payment, Mobile homes, Last resort housing.

Title 32 of the Code of Federal Regulations is amended as set forth below.

December 1, 1987.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

PART 259—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 259 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 259.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 259.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this section is listed below:

Direct Federal Activities—January 19, 1988.

Federally assisted Activities—as soon as state law permits, but no later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those programs which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note.

3. Part 259 is revised to read as set forth below:

PART 259—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894, (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 259.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

DEPARTMENT OF EDUCATION

34 CFR Part 15

DATES: The amendment to § 15.1 takes effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of the amendment to § 15.1, call or write the Department of Education contact person. The total revision of 34 CFR Part 15 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESS: Comments should be sent to Sarah L. Kemble, Office of the General Counsel, U.S. Department of Education, Room 4121, 400 Maryland Avenue, SW., Washington, DC, 20202; (202) 732–2730.

FOR FURTHER INFORMATION CONTACT: Sarah L. Kemble (202) 732–2730.

ADDITIONAL SUPPLEMENTARY INFORMATION: The regulations apply to programs administered by the U.S Department of Education where a Federal agency, a State or a State agency, may compel surrender of privately owned real property or displacement of residents of that property, because the property is needed for a federally assisted project.

The 1987 Amendments provide that States and State agencies shall implement the changes made by those amendments and their implementing regulations no later than April 2, 1989. This provision gives States and State agencies time to conform their own legal authority to the changes in the Federal law. Accordingly, these interim final regulations provide for a two-step revision of Part 15. On April 2, 1989 Part 15 is revised to substitute a cross-reference to the Department of Transportation regulations which will then be the only regulations substantively implementing the Federal law governing relocation assistance and real property acquisition.

For projects funded by the Department of Education, compliance with the 1987 Amendments depends upon the legal authority possessed by the recipient of Federal assistance. Therefore, the implementation date for the Federal assistance programs funded by the Department is as soon as the recipient of the assistance is legally able to comply, but not later than April 2, 1989.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 15

Real property acquisition, Relocation assistance.

Dated: December 14, 1987.

William J. Bennett,

Secretary of Education.

The Secretary amends Part 15 of Title 34 of the Code of Federal Regulations as follows:

PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for this Part 15 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 15.1 is amended by revising the section heading, adding "(a) *Purpose.*" Before the undesignated introductory text, redesignating paragraphs (a) and (b) as paragraphs (a)(1) and (a)(2) respectively, and adding a new paragraph (b) to read as follows:

§ 15.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this rule is as soon as the recipient of Federal assistance has authority to comply but not later than April 2, 1988.

(2) Until April 2, 1989 the provisions of this part are applicable only to those programs which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 15 is revised to read as set forth below:

PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 15.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 904

DATES: The amendment to § 904.1 is effective January 19, 1988. The revision of Part 904 is effective April 2, 1989. Comments must he received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Mr. Reginald Robinson, Director, Business Relations, Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. Phone: (202) 724–9068.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald Robinson, Director, Business Relations, Pennsylvania Avenue Development Corporation, Suite 1220N, 1331 Pennsylvania Avenue, NW., Washington, DC 20004. Phone: (202) 724–9068.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Pennsylvania Avenue Development Corporation (PADC) has determined that it is able to comply with the provisions of the 1987 Amendments and the provisions of the interim final rule on this subject published by DOT elsewhere in today's issue of the **Federal Register**. Therefore, after January 19, 1988, PADC programs will be governed by the DOT regulations.

List of Subjects in 36 CFR Part 904

Real property acquisition, Relocation assistance.

Title 36 of the Code of Federal Regulations is amended as set forth below:

M.J. Brodie,

Executive Director.

PART 904—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 904 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 904.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 904.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) After January 19, 1988, the Pennsylvania Avenue Development Corporation will be able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) and will be governed by implementing regulations set forth in 49 CFR Part 24.

(2) Until April 2, 1989, the provisions of this part are applicable only to those program activities which were undertaken prior to January 19, 1988, and which therefore were unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 904 is revised to read as set forth below:

PART 904—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 904.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

VETERANS ADMINISTRATION

38 CFR Part 25

DATES: The amendment to 38 CFR 25.1 is to be effective January 19, 1988. The revision of Part 25 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESS: Comments should be sent to: The Administrator of Veterans Affairs (271A), 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except for holidays) until February 26, 1987.

FOR FURTHER INFORMATION CONTACT: Alan Maurer, Director, Special Programs, Office of Facilities, (202) 233–3398.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Veterans Administration (VA) is proposing to amend its regulations implementing amendments to the URA contained in 38 CFR Part 25, as a result of legislation enacted on April 2, 1987, and known as the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note). The VA will adopt these government-wide amendments to the regulations as set forth by the Department of Transportation. Certain sections of Title 38 CFR will be amended by inserting the revised regulations in those parts.

The VA has determined that it is able to comply with the provisions of the 1987 amendments to the Act and the government-wide implementing regulation at 49 CFR Part 24, immediately with respect to direct Federal activities. Therefore the VA's direct Federal activities become subject to the government-wide regulation on January 19, 1988. For federally-assisted activities compliance depends upon the legal authority possessed by the recipient of the Federal assistance. Therefore, the implementation date for all of the VA's federally assisted activities is the date the recipient of Federal assistance is legally able to comply, but not later than April 2, 1989.

List of Subjects in 38 CFR Part 25

Real property acquisition, Relocation assistance.

Title 38 of the Code of Federal Regulations is amended as set forth below.

Approved: November 20, 1987.

Thomas K. Turnage,

Administrator.

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 25 is revised to read as follows:

Authority: Section 213, Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1984 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 25.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 25.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are now able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this rule is listed below:

Veterans Administration, January 19, 1988.

Federally assisted, as soon as State law permits, but no later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those programs which are unable to comply with the Surface Transportation and Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 25 is revised to read as set forth below:

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 25.1 Uniform relocation

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 4

[FRL-3302-5]

DATES: The revision of Part 4 is effective April 2, 1989. Comments must be submitted on or before February 16, 1988.

ADDRESSES: Comments should be sent to Marshall Schy, Grants Administration Division (PM-216), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Marshall Schy (see address above), 202-382-5298.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) is not adopting at this time the interim final rule published by The Department of Transportation elsewhere in today's **Federal Register**. For administrative reasons and to effect a smoother transition to the changes contained in the 1987 amendments to the Uniform Relocation Act (URA), EPA believes that implementation of these changes for its assistance recipients should be deferred to the final rulemaking process which the statute mandates for completion by April 2, 1989. EPA activities involving the URA will continue to be covered by the existing government-wide common rule found at 40 CFR Part 4 until the final rulemaking process is complete. When that occurs, EPA's URA activities will be covered by the government-wide final rule that DOT will issue at 49 CFR Part 24.

The EPA programs that involve the URA are the Wastewater Treatment Construction Grant program and the Superfund program. However, in keeping with Executive Order 12316 and the interagency agreement between EPA and the Federal Emergency Management Agency (FEMA), URA activities for the Superfund program will be implemented by FEMA according to their regulations. Persons concerned with the implementation of URA activities under Superfund should consult FEMA's action on this subject elsewhere in today's **Federal Register**.

List of Subjects in 40 CFR Part 4

Real property acquisition, Relocation assistance.

December 4, 1987

Anthony Musick,

Acting Assistant Administrator for Administration and Resources Management.

PART 4—UNIFORM RELOCATION ASSISTANT AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Public Law 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 4.1 Uniform relocation assistance and real property acquisition.

Effective April 2, 1989, regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Public Law 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-51

DATES: The amendment to § 105-51.001 is effective January 19, 1988. The revision of Part 105-51 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Mrs. Hilary Peoples, Director, Acquisition Policy Division, General Services Administration, Public Buildings Service, 18th and F Streets, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mrs. Hilary Peoples, Director,Acquisition Policy Division (202-566-1508), or Mr. James W. McMahon, Acquisition Policy Division (202-566-1269), General Services Administration, 18th and F Streets, NW., Washington, DC 20405. Office hours Monday-Friday from 8:00-4:30 p.m., e.t.

ADDITIONAL SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that it is able to comply with the provisions of the 1987 Amendments and the provisions of the interim final rule published by Department of Transportation elsewhere in today's issue of the **Federal Register**. Therefore, after January 19, 1988, GSA programs will be governed by DOT regulations.

List of Subjects in 41 CFR Part 105-51

Real property acquisition, Relocation assistance.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Dated: December 4, 1987.

T.C. Golden,

Administrator of General Services.

PART 105-51—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 105-51 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

2. Section 105-51.001 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 105-51.001 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) After January 19, 1988, the General Services Administration will be able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note) and will be governed by implementing regulations set forth in 49 CFR Part 24.

(2) Until April 2, 1989, the provisions of this part are applicable only to those program activities which were undertaken prior to January 19, 1988 and which therefore were unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note).

3. Part 105-51 is revised to read as set forth below:

PART 105–51—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 105–51.001 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

DEPARTMENT OF THE INTERIOR

41 CFR Part 114–50

DATES: The amendment to § 114–50.301 is effectve January 19, 1988. The revision of Part 114-50 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Billy Lee Hart, Chief, Property Management Division, Office of Acquisition and Property Management, Room 5508, Department of the Interior, Washington, DC 20240, Phone: (202) 343–3336.

FOR FURTHER INFORMATION CONTACT: Billy Lee Hart, (202) 343–3336.

ADDITIONAL SUPPLEMENTARY INFORMATION: Federal agencies are promulgating jointly an interim final rule to implement cost-effective policies and procedures governing the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Public Law 100–17. This rule provides a transition from the existing government wide common rule on the Uniform Act, published at 17 separate places in the Code of Federal Regulations to a government-wide single rule appearing at 49 CFR Part 25.

The Department of the Interior has determined that it could comply with the 1987 Amendments upon their date of enactment for direct Federal programs. Therefore, the implementation date for direct Federal activities is April 2, 1987. Accordingly, any person displaced by such activities after April 2, 1987, would be covered by the governmentwide regulation in 49 CFR Part 24. For federally assisted activities compliance depends upon the legal authority possessed by the recipient of the Federal financial assistance. Therefore, the implementation date for all of the Department's federal assistance programs is as soon as the recipient is legally able to comply, but not later than April 2, 1989.

The Department of the Interior has determined that it is unnecessary to request prior notice and comment on this document under the Administrative Procedure Act, 5 U.S.C. (b) (B), because the Department of Transportation rule that is being cross-referenced implements nondiscretionary benefit provisions of the Surface Transportation and Uniform Relocation Assistance Act of 1987. The discretionary provisions of the Act will be the subject of a later notice of proposed rulemaking to be issued by the Department of Transportation.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The rule implements benefit changes made by the Surface Transportation and Uniform Relocation Assistance Act of 1987 and is not expected to have an annual economic effect of $100 million or more or to significantly affect small entities. The primary impact of the changes made by the Act is expected to be an increase in benefits provided to small businesses and the elimination of unnecessary administrative requirements.

This document does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The requirements contained in the current 41 CFR Part 114–50 were approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1084–0010.

The Department hereby determines that this document is not a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 and does not require the preparation of an environmental impact statement or assessment.

The author of this document is Billy Lee Hart, Chief, Property Management Division, Office of Acquisition and Property Management.

List of Subjects in 41 CFR Part 114–50

Relocation assistance, Real property acquisition.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary Policy, Budget and Administration.

December 1, 1987.

PART 114–50—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 114–50 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 114–50.301 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 114–50.301–1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are able to comply with the Surface Transportation and Uniform Relocation Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this section is listed below:

Direct Federal activities—Persons displaced after April 2, 1987.

Federally-assisted activities—As soon as state law permits, but not later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those programs which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 114–50 is revised to read as set forth below:

PART 114-50—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 114-50.301-1 Uniform relocation and real property acquisition

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat, 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

DEPARTMENT OF JUSTICE

41 CFR Part 128-18

DATES: The amendment to § 128-18.5001-1 is effective January 19, 1988. The revision of Subpart 128-18.50 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be sent to Mr. Benjamin F. Burrell, Department of Justice, Director, Facilities and Property Management Staff, Suite 700, 1425 K Street, NW., Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Mr. Benjamin F. Burrell, Department of Justice, Director, Facilities and Property Management Staff, Suite 700, 1425 K Street, NW., Washington, DC 20530. Telephone: (202) 633-2995.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Justice is participating with other federal agencies to implement the provisions of the Uniform Relocation Act Amendments of 1987 (1987 Amendments) (Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Pub. L. 100-17, 101 Stat.132). The primary purpose of the 1987 Amendments is to establish a single rule as opposed to the existing common rule.

The Department of Transportation has been designated as the lead agency in the implementation of the Uniform Act. Therefore, the single rule is located in the Department of Transportation's portion of the Code of Federal Regulations at 49 CFR Part 24.

List of Subjects in 41 CFR Subpart 128-18.50

Real property acquisition, Relocation assistance.

Title 41 of the Code of Federal Regulations is amended as set forth below.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 128-18—ACQUISITION OF REAL PROPERTY

Subpart 128-18.50—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

1. The authority citation for Subpart 128-18.50 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

2. Section 128-18.5001-1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 128-18.5001-1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) After January 19, 1988, the Department of Justice will be able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note). That act designates the Department of Transportation (DOT) as the lead agency for implementing the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 ,Pub. L. 91-646, 84 Stat. 1984 (42 U.S.C. 4601) as amended. Therefore, after January 19, 1988, the Department of Justice will be governed by DOT's implementing regulations set forth in 49 CFR Part 24.

(2) Until April l, 1989, the provisions of this part are applicable only to those program activities which were undertaken prior to January 19, 1988, and which therefore were unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-256, 42 U.S.C. 4601 note).

PART 128-18—ACQUISITION OF REAL PROPERTY

3. Subpart 128-18.50 is revised to read as set forth below:

Subpart 128-18.50—Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note).

§ 128-18.5001-1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100-17, 101 Stat. 246-255, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 25.

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 25

DATES: The amendments to § 25.1 is effective January 19, 1988. The revision of Part 25 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESS: Comments should be sent to Charles D. Robinson, Federal Emergency Management Agency, 500 C. Street, SW., Washington, DC 20472, (202) 646-3805.

FOR FURTHER INFORMATION CONTACT: Charles D. Robinson at (202) 646-3805.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency provides permanent relocation assistance to residents, businesses, and community facilities by authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, *as amended,* and section 2(c)(1) Executive Order 12580. The revision to Part 25 will apply to permanent relocation programs beginning on or after January 19, 1988.

List of Subjects in 44 CFR Part 25

Real property acquisition, Relocation assistance.

Title 45 of the Code of Federal Regulations is amended as set forth below.

Dave McLoughlin,

Deputy Associate Director.

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 25 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 25.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 25.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those program activities which are abled to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. Title 49 Part will apply to Superfund Relocation Assistance Programs beginning on or after January 19, 1988.

(2) Until April 2, 1989, the provisions of this part are applicable only to those program activities which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

3. Part 25 is revised to read as set forth below:

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Titled IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 25.1 Uniform relocation assistance and real property acquisition

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 15

DATES: The amendment to § 15.1 is effective January 19, 1988. The revision of Part 15 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESSES: Comments should be mailed or hand delivered to: Office of Procurement, Assistance and Logistics, Department of Health and Human Services, Room 513–D, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington DC, 20201. Comments will be available for public inspection in Room 517–D at the same address, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Gary Houseknecht, Division of Assistance and Cost Policy at the above address, or by calling (202) 245–7568.

ADDITIONAL SUPPLEMENTARY INFORMATION: The Department of Health and Human Services has determined that it can comply with the provisions of the Surface Transportation and Uniform Relocation Assistance Act of 1987 immediately with respect to direct federal development. Therefore, the implementation date for direct federal activities is January 19, 1988. For federally-assisted activities, compliance depends upon the legal authorities possessed by the recipient of the federal assistance award. Therefore, the implementation date for all of the Department's federal assistance programs is as soon as the recipient of the award is legally able to comply, but not later than April 2, 1989.

List of Subjects in 45 CFR Part 15

Real property acquisition, Relocation assistance.

Title 44 of the Code of Federal Regulations is amended as set forth below.

Dated: November 20, 1987.

Otis R. Bowen,

Secretary of Health and Human Services.

PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 15 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4633) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

2. Section 15.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2) respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 15.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are able to comply with the Surface Transportation and Uniform Relocation Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this rule is listed below:

Direct federal activities—January 19, 1988.

Federally-assisted activities—as soon as state law permits, but no later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those programs which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat 246–256, 42 U.S.C. 4601 note).

3. Part 15 is revised to read as set forth below:

PART 15—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4633) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note).

§ 15.1 Uniform relocation assistance and real property acquisition.

Regulations and procedures for complying with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601 et seq.), as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24.

DEPARTMENT OF TRANSPORTATION

[FHWA Docket No. 87–22]

49 CFR Part 25

DATES: The amendment to § 25.1 is effective December 17, 1987. The removal of Part 25 is effective April 2, 1989. Comments must be received on or before February 16, 1988.

ADDRESS: Submit written and signed comments, preferably in triplicate, to FHWA Docket No. 87–22, Federal Highway Administration, Room 4205, HCC–10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Barbara Reichart, Director, Office of Right of Way, HRW–1, FHWA, (202) 366–0116, or Reid Alsop, Office of Chief Counsel, HCC–40, FHWA, (202) 366–1371, 400 7th Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

ADDITIONAL SUPPLEMENTARY INFORMATION: The reasons for making the changes set forth below, are described in detail in the above common preamble and in the preamble to the Department of Transportation (DOT) interim final rule which appears elsewhere in this **Federal Register**. One of the primary reasons is to allow those Federal programs that are able to do so, to take immediate advantage of explicit nondiscretionary benefits provided by the 1987 Amendments. This would be accomplished by allowing direct Federal programs to operate under the DOT interim final rule (49 CFR Part 24). Within DOT direct Federal programs are those that are undertaken solely by one of DOT's component agencies. The DOT interim final rule (49 CFR Part 24) is made fully applicable to DOT direct Federal programs on the date specified in the amendments to § 25.1 below.

With regard to DOT Federal-aid programs that provide financial assistance to State and local agencies, the date that such programs could implement the DOT interim final rule would depend on the authority of the State and local grant recipient to comply with the 1987 Amendments. Some such recipients already have such authority while others are awaiting the enactment of necessary State enabling legislation. Generally, the specific date that a Federal-aid recipient could implement the interim final rule in 49 CFR Part 24 would be the date provided in the assurances the recipient must submit, in accordance with the Uniform Act, to the Federal funding agency.

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation.

The FHWA believes that circumstances warrant the issuance of this rulemaking action without notice or an opportunity for prior comment. The DOT interim final rule, which appears elsewhere in this **Federal Register**, implements the nondiscretionary provisions of the 1987 Amendments, and is effective upon date of publication, in order to enable those agencies that are able to utilize those provisions to do so expeditiously. This cross referencing action amends $ 25.1 to make that DOT interim final rule fully applicable to those DOT funded programs that are able to utilize it. Accordingly, for the same reasons set forth in the DOT interim final rule, a period for public comment on this cross reference is unnecessary.

The FHWA finds good cause to make this regulation effective without prior notice or opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act, 5 U.S.C. 553(b). Accordingly, the provisions that are contained in this rulemaking action are effective as provided by the section entitled "Dates."

While the FHWA does not anticipate that there will be any useful public comment on the general issue of the statutory provisions themselves, there may be some comments on the effect of the cross referencing provisions contained in this interim final rule. For this reason, publication of this interim final rule without an opportunity for prior comment, but with a request for comments following publication is consistent with the Department of Transportation's regulatory policies. Any comments that are submitted specifically to this docket will be fully considered.

The interim final rule in 49 CFR Part 24 will be made applicable to persons that have not been displaced, and to property that has not been acquired, as of the implementation date established in § 25.1 below. This accords with the policy followed with previous changes in Uniform Act requirements.

Because DOT, as the government's lead agency for the Uniform Act, is issuing a single government-wide rule for implementing the Uniform Act at 49 CFR Part 24, the action taken below by DOT differs slightly from that being taken by other affected Federal agencies. Since the new single Uniform Act rule will be set out in its entirety in 49 CFR Part 24 of the DOT regulations, it is not necessary to replace the existing DOT common rule, appearing at 49 CFR Part 25 with a cross reference to the government-wide rule in Part 24. Rather, Part 25 would be rescinded on April 2, 1989, the date the 1987 Amendments become fully applicable.

List of Subjects in 49 CFR Part 25

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Title 49 of the Code of Federal Regulations is amended as set forth below.

Issued on: December 11, 1987.

R.A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

PART 25—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

1. The authority citation for Part 25 is revised to read as follows:

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100–17, 101 Stat. 246–256 (42 U.S.C. 4601 note); and 49 CFR 1.48(dd).

2. Section 25.1 is amended as follows:

a. The title of the section is revised to read as set forth below.

b. The introductory text of the section is designated paragraph "(a) *Purpose.*" and the paragraphs currently designated (a) and (b) are redesignated (a)(1) and (a)(2), respectively.

c. A new paragraph (b) is added to read as set forth below.

§ 25.1 Purpose and applicability.

(a) *Purpose.* * * *

* * * * *

(b) *Applicability.* (1) Regulations applicable to those programs which are able to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note) are set forth in 49 CFR Part 24. The implementation date for each program affected by this section is listed below:

Direct Federal Highway Activities, April 2, 1987.

Federally Assisted Activities, as soon as possible after April 2, 1987 but no later than April 2, 1989.

(2) Until April 2, 1989, the provisions of this part are applicable only to those programs which are unable to comply with the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Title IV of Pub. L. 100–17, 101 Stat. 246–256, 42 U.S.C. 4601 note).

PART 25—[REMOVED AND RESERVED]

3. Part 25 is removed and reserved effective April 2, 1989.

[FR Doc. 87–28854 Filed 12–16–87; 8:45 am]

BILLING CODES 3410–98–M; 6450–01–M; 7510–01–M; 3510–FB–M; 4510–23–M; 8120–02–M; 3810–01–M; 4000–01–M; 7630–01–M; 8320–01–M; 6560–50–M; 6820–23–M; 4310–RF–M; 4410–01–M; 6718–01–M; 4150–04–M; 4910–62–M

POSTAL SERVICE

39 CFR Part 777

Implementation of the Uniform Relocation Act Amendments of 1987

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Postal Service's relocation regulations to make them consistent with Title IV of Pub. L. 100–17, the Uniform Relocation Act Amendments of 1987. Specifically, these amendments (1) increase the potential fixed payment in lieu of actual moving and related expenses for business and farm moves, (2) change the method of determining the maximum downpayment assistance for displaced 90 day owners and tenants, and increase that assistance, (3) increase the maximum benefits for displaced 180 and 90 day owner occupants, (4) change the formula for computing the amount of rental assistance to increase that assistance, and (5) increase the maximum replacing housing payment.

EFFECTIVE DATE: January 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Philip E. Wilson, (202) 268–3111.

List of Subjects in 39 CFR Part 777

Real property acquisition, Relocation assistance.

For the reasons explained in the **SUMMARY** above, 39 CFR Part 777 is amended as follows:

PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

1. The authority citation for Part 777 continues to read as follows:

Authority: 39 U.S.C. 401.

§ 777.23 [Amended]

2. In § 777.23, the introductory text of paragraphs (e) and (g) are amended by removing the words "not less than $2,500 nor more than $10,000" and substituting the words "not less than $1,000 nor more than $20,000".

§ 777.24 [Amended]

3. In § 777.24, paragraph (b)(2) is amended by removing "15,000" and adding "$22,500"; paragraphs (e)(2), the introductory text of (f), and (f)(4) are amended by removing "$4,000" and adding "$5,250"; paragraph (f)(1) is amended to remove "48" wherever it appears and to add "42".

4. Paragraph (g) of § 777.24 is revised to read as follows:

§ 777.24 Replacement housing payments.

* * * * *

(g) *Downpayment assistance.* Downpayment assistance, not to exceed $5,250, is available to 90 day owner occupants and 90 day tenants. This $5,250 amount may be considered to include the full amount of the required downpayment and incidental expenses.

* * * * *

§ 777.26 [Amended]

5. In § 777.26, paragraph (b)(3) is amended by removing "$15,000" and adding "$22,500", and paragraph (b)(4) is amended by removing "$4,000" and adding "$5,250".

§ 777.27 [Amended]

6. In § 777.27, paragraph (c)(4) is amended by removing the words "$4,000 and $15,000" and by adding the words "$5,250 and $22,500".

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 87–28984 Filed 12–16–87; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 42 and 43

[Docket No. R-87-1366; FR-2357]

Uniform Relocation Act Amendments of 1987

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of intent.

SUMMARY: This Notice explains why the Department of Housing and Urban Development is not participating in today's multi-agency publication of the interim rule by the Department of Transportation (DOT) partially implementing the Uniform Relocation Act Amendments of 1987. The Department intends to publish its part of this interagency undertaking as soon as HUD's legislative review obligations have been fulfilled.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410-0500. Telephone (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), including its amendments by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (1987 Amendments), apply to programs administered by HUD.

The Department had intended to publish a separate preamble to go along with the interim rule, published elsewhere in today's edition of the **Federal Register** by DOT, that would have discussed the application of the interim rule to, and the rule's impact on, HUD's programs and existing regulations. That separate preamble is not being published today, however, because under applicable law (see sec. 7(o) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(o)), HUD must submit to the responsible congressional committees an agenda of all its rules that are under development. Any rule that is on that agenda "may not be published for comment prior to or during the first period of 15 calendar days of continuous session of Congress [and,] [i]f within such period, either Committee notifies the Secretary * * * that it intends to review any rule * * * on the agenda, the Secretary shall submit * * * such rule * * * at least 15 calendar days of continuous session prior to its being published for comment in the **Federal Register**."

HUD identified this rule as one in its proposed stage, in the Department's *Semiannual Regulatory Agenda* published on October 26, 1987 (see 52 FR 40358, 40386), and the Committees requested the rule for review. As a consequence, the preamble that HUD would have published today as part of DOT's rule cannot be published until the statutory 15-day period has expired. On the expiration of that period, HUD will publish a separate agency-specific preamble, referencing DOT's rule.

Dated: December 9, 1987.

Grady J. Norris,

Assistant General Counsel for Regulations.

[FR Doc. 87-28677 Filed 12-16-87; 8:45 am]

BILLING CODE 4210-32-M

federal register

Thursday
December 17, 1987

Part III

Federal Home Loan Bank Board

Prices for Federal Home Loan Bank Services; Notice

FEDERAL HOME LOAN BANK BOARD

[No. 87-1226]

Prices for Federal Home Loan Bank Services

Date: December 10, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of prices for Federal Home Loan Bank Services.

SUMMARY: The Office of District Banks and the Office of Policy And Economic Research of the Federal Home Loan Bank Board ("Board") are publishing, pursuant to delegated authority, the prices charged by the Federal Home Loan Banks ("FHLBanks") for (1) processing and settlement of items ("negotiable order of withdrawal or NOW") and; (2) demand deposit accounting ("DDA") and other services offered to member institutions.

EFFECTIVE DATE: December 17, 1987.

FOR FURTHER INFORMATION CONTACT: Richard J. Hotaling, (202) 377-6715, or William J. Carey, (202) 377-6656, Office of District Banks, Federal Home Loan Bank Board, 1700 G Streeet, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION: Section 11(e) of the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1431(e)) authorizes the Federal Home Loan Banks (1) to accept demand deposits from member institutions, (2) to be drawees of payment instruments, (3) to engage in collection and settlement of payment instruments drawn on or issued by members and eligible institutions, and (4) to engage in such incidental activities as are necessary to the exercise of such authority. Section 11(e)(2)(B) of the Bank Act (12 U.S.C. 1431(e)(2)(B)) requires the Federal Home Loan Banks to charge fees for services authorized in that section, which fees are "to be determined and regulated by the Board consistent with the principles set forth in section 11A(c) of the Federal Reserve Act." Board regulations at 12 CFR 534.6 require that the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research (or their designees) review, approve, and publish these fees at least annually. The fees for 1987 will be published at this time, but compliance for 1987 will be determined in 1988 when data for the entire year is available. The regulations require the FHLBanks to follow four basic pricing principles as follows:

(1) Services must be priced explicitly.

(2) Services must be available to member and nonmember depository institutions on an equal basis.

(3) Over the long run, fees must cover direct and indirect costs and must also cover an imputed cost that includes taxes paid and the return on capital that would have been provided if the services had been furnished by a private firm.

(4) Interest on float must be charged at the Federal Funds rate.

In 1980, the Board developed a methodology to determine compliance with these four principles, which is based on discounted cash flows from the NOW and DDA services. Since the FHLBanks had very few assets employed in the provision of these services and only projections of future income from NOW services, the methodology adopted at that time was appropriate. Compliance with the pricing principles focused on a five-year time span to recover all direct and indirect costs of these services.

At the end of 1985, the FHLBanks completed five years of NOW processing services. Both NOW services and DDA type services are mature activities with an asset base and normal income flows. In recognition of this evolution, the Board developed an up-to-date methodology substantially similar to that adopted by the Federal Reserve Board to monitor pricing of these services.

The following section summarizes the adopted methodology, which will continue to ensure that FHLBank NOW and DDA services are not priced in a manner that would provide unfair competition to private firms.

Methodology

Two major issues arise in determining appropriate pricing methodology. First, competitor firms must be identified. Second, adjustments must be made for the taxes and return on capital that prices of competitor firms must cover. This adjustment is sometimes referred to as a Private Sector Adjustment Factor ("PSAF").

The methodology was developed based on bank holding companies as competitor firms. Although firms in other industries could be chosen as competitors, commercial banks are generally the most frequent competitors in item processing and related services. Similarly, the Federal Reserve Bank also has chosen bank holding companies as competitors for development of adjustment for taxes and the imputed cost of capital.

Adjustment for Taxes and Return on Capital

In order to compare competitor data to the FHLBanks, several broad assumptions were established as follows:

(A) NOW and DDA services may be combined under the Board's pricing approval methodology.

(B) Compliance with NOW/DDA pricing guidelines is on an individual FHLBank basis.

(C) One set of bank holding company data will be applied to FHLBanks, rather than applying regional competitor data to regional FHLBanks.

(D) Federal Home Loan Bank data, which is required for the NOW/DDA pricing methodology, may be determined on an individual FHLBank basis as follows: (1) NOW/DDA prices; (2) earnings on balances generated from item processing; (3) direct and indirect costs; and (4) assets employed in NOW/DDA services. Based on the previous assumptions, appropriate bank holding company data and FHLBank data can be incorporated into the pricing methodology. The pricing methodology is as follows:

(A) Federal Home Loan Bank NOW/DDA costs are adjusted (increased) for the cost of financing the assets (primarily plant and equipment) employed in the provision of NOW/DDA services.

(B) NOW/DDA costs are increased for sales taxes that would have been paid if subject to such tax.

(C) NOW/DDA costs are adjusted for the cost of float at the Fed Funds rate.

(D) Imputed income taxes are applied to pre-tax NOW/DDA income using a three-year average from bank holding company data (35.24% rate).

(E) The after tax rate of return on capital from NOW/DDA services is compared to the after tax return on capital of bank holding companies (12.65% rate).

These adjustment factors ensure that the NOW/DDA services are priced in a competitive manner. Also, the factors are similar to the adjustments made by the Federal Reserve Board and represent a conservative approach consistent with the intent of Congress, that pricing encourage competition and efficiency in the provision of these services.

In accordance with these principles, the Director of the Office of District Banks and the Director of the Office of Policy and Economic Research have reviewed the current 1987 prices for Federal Home Loan Bank services which are published herewith. In early 1987 compliance with the pricing principles was tested based upon projected levels of service for each FHLBank. Final compliance and approval for 1987 will be determined in early 1988 when data

for the entire year is available. At that time 1988 prices will be published and preliminary compliance tests for 1988 will be performed so that the Board's monitoring of the pricing is continuous. The services and their prices which are published herewith are divided into two categories: (1) NOW Services involved in the processing and settlement of items drawn on or issued by member institutions ("Schedule A"); and (2) services relating to demand deposit accounts and other services maintained by member institutions with the FHLBanks ("Schedule B").

The services described in the attached schedules are not identical for any two FHLBanks, as each FHLBank's program is tailored to meet the needs of the member institutions in the FHLBank's district. Furthermore, the volume of services rendered varies significantly among the districts, with the result that the costs of providing the services also vary from district to district. In light of these considerations, the Board continues its practice of approving separate district fee structures rather than adopting a uniform pricing scheme. This policy is consistent with the congressional intent that pricing encourage competition.

It is not required that each processing step or transaction performed by a FHLBank be specifically priced. This policy permits the FHLBanks to establish fee schedules that are in line with the marketing practices of providers of correspondent services in each district.

The directors of the Office of District Banks and the Office of Policy and Economic Research of the Federal Home Loan Bank Board hereby give notice of the following fee schedules for Federal Home Loan Bank services:

Schedule A: Item Processing and Settlement Services (1987 NOW Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

(Service not provided)

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1987 NOW SERVICES)

Service	Fee
Settlement (per month)	$250.00
Minimum Monthly Fee	250.00
Standard Intercept (per item)	.050
Standard Intercept-Delayed Check (per item)	.035
Check Safekeeping:	
First 50,000 items/month (per item)	.025
50,001 to 100,000 items/month (per item)	.020
100,001 plus items/month (per item)	.010
Check Bulkfiling:	
First 50,000 items/month (per item)	.030
50,001 to 100,000 items/month (per item)	.025
100,001 plus items/month (per item)	.015
Statement Rendering:	
Bulk Filing items (per statement)	.30
Check Safekeeping items (per statement)	.05
Item Returns (per item)	3.25
Item Returns without entry (per item)	6.00
Late Return Premium	.25
FRB Large Dollar Notification	4.250
Photocopies (per copy)	2.50
Original Item Retrieval (per item)	4.00
Datafax High Dollar Items—Front only (per item)	1.50
Datafax High Dollar Items—Both Sides (per item)	2.00
Counter Item Filming (per item)	.030
Counter Item Sorting (per item)	.030
Notices or Advertising Inserts (per insert)	.010
Monthly History Microfiche (per 100,000 items)	8.00
Monthly History Microfiche-Additional Copies (per fiche card)	1.00
Cycle Changes (per cycle)	25.00
Cycle Exception Maintenance (per mo. per account)	.50
Data Center Conversions (per conversion)	500.00

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1987 NOW SERVICES)

Services	Fee
Inclearing:	
First 25,000 items/month (per item)	$0.0360

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1987 NOW SERVICES)—Continued

Services	Fee
25,001–58,500 items/month (per item)	0.0335
58,501–91,500 items/month (per item)	.0310
91,501–125,000 items/month (per item)	.0285
125,001–158,500 items/month (per item)	.0260
158,501–191,500 items/month (per item)	.0235
Over 191,500 items/month (per item)	.0210
Backroom:	
Truncated	
0–25,000 (per item)	.0370
25,001–58,500 (per item)	.0355
58,501–91,500 (per item)	.0340
91,501–125,000 (per item)	.0325
125,001–158,500 (per item)	.0310
158,501–191,500 (per item)	.0295
191,501-plus (per item)	.0280
Modified Backroom Reduce above prices by (per item)	.01
Non-truncated	
0–25,000 (per item)	.0470
25,001–58,500 (per item)	.0455
58,501–91,500 (per item)	.0440
91,501–125,000 (per item)	.0425
125,001–158,500 (per item)	.0410
158,501–191,500 (per item)	.0395
191,501-plus (per item)	.0380
Over-the Counter Checks (per item)	.15
Return Call (per item)	.75
Late Return Call (per item)	.66
Items Over $2,500 Returned to FRB (per item)	4.25
Check Copies (per item)	3.00
Check Retrieval (per item)	1.50
Statement & Report Postage	(1)
Statement Envelopes:	
Small Standardized (per envelope)	.05
Small Customized (per envelope)	.07
Large (per envelope)	.46
Mid-cycle statement rendering:	
Purged Statement (per item—minimum charge of $2.50)	.50
Non-purged Statement (per statement)	2.50
Minimum Charge: (per month)	200.00

[1] Actual cost.

Notes: Transportation of checks or reports between Federal Home Loan Bank's designated distribution points and the individual financial institution is at the expense of the financial institution.

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1987 NOW SERVICES)

Services	Fee
Settlement Only (per month)	$100.00
Daily Delivery (Same Day and Next Day):	
1st 50,000 (per item)	.040
Over 50,000 (per item)	.035
Bulk Filing:	
1st 50,000 (per item)	.045
2nd 50,000 (per item)	.040
3rd 50,000 (per item)	.030
Over 150,000 (per item)	.025
Statement Matching:	
1st 50,000 (per item)	.070
2nd 50,000 (per item)	.065
3rd 50,000 (per item)	.055
Over 150,000 (per item)	.050
Special Statements (IRA, Savings, etc.)	.020/statement
Multiple Statement Inserts[1]	.010/statement
Truncation:	
1st 50,000 (per item)	.030
2nd 50,000 (per item)	.025
3rd 50,000 (per item)	.020
Over 150,000 (per item)	.015
Return Items	3.00

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1987 NOW SERVICES)—Continued

Services	Fee
Large Dollar Return Items	4.00
Facsimile:	
Large Dollar (per item)	2.50
On Request (per item)	2.00
Bookeeping and Acc't No. Rejects (per item)	2.50
Over-the-Counter Items (per item)	.035
Photocopies (per item)	2.50
Without Entry Items[2]	3.50
Finesort (Check Number)—Special Accounts	.02
Custom Coding (for mergers, branch acquisitions and sales, etc.)	100.00/hour
Special Requests (i.e., 50 or more photocopies per request or customer account, etc.)	25.00/hour
Special Handling (if required by 2 or more account number formats resulting from mergers, conversions, branch acquisitions, etc.; *charging will begin four months after effective date if still required*)	500.00/month

[1] More than one insert per statement (first insert per statement is free).
[2] A Without Entry Item is a check which is sent back to the depositing institution to secure proper endorsement or obtain a refund for a forged endorsement or signature.

Notes: The minimum monthly billing for service options (other than Settlement Only) is $100.00.
Prices for all options include data transmission to on-line or in-house processors.
Actual item delivery expense will be charged to the institution as incurred, including postage under "Statement Matching" above.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1987 NOW SERVICES)

	Service				
Items/Month	Daily return unsorted	Daily return sorted	Truncation	Bulk filing w/out stuffing	Bulk filing with stuffing
0 to 50,000	$.0060	$.0400	$.0400	$.0425	$.0775
50,001 to 100,000	.0050	.0250.0	.0250	.0275	.0625
100,001 to 150,000	.0050	.0150.0	.0150	.0175	.0525
150,001 and over	.0040	.0090.0	.0090	.0115	.0465

Special Services	Fee
Settlement Only (per month—flat fee)	$200.00
Check Retrieval or Inspection of Original Item (per item)	1.50
Photocopy (per copy)	1.00
Advertising Insertion (per item)	.02
Posted "on-us" (per item)	.03
Statement Stuffing for Truncated Statement (per statement)	.01
Return Items Processed by Bank (per item)	2.50
Additional Sorting Upon Request:	
Fine Sorting (per item)	.005
Cycle Sorting (per item)	.005
Large Dollar Return Notification (per item)	2.00
Multiple Service Discount on Basic Service, if FHLBank Check Deposit User (the following percentage off Basic Service Fees:)	5.00%

DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1987 NOW SERVICES)

	Service		
Items per-month	Safe keeping	Turnaround (daily or cycled)	Complete
0 to 5,000	$.045	$.053	$.077
5,001 to 10,000	.037	.048	.075
10,001 to 15,000	.036	.044	.073
15,001 to 25,000	.031	.037	.072
25,001 to 50,000	.030	.033	.070
50,001 to 75,000	.026	.030	.066
75,001 to 100,000	.023	.027	.065
100,001 to 125,000	.021	.024	.064

DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1987 NOW SERVICES)—Continued

Items per-month	Service: Safe keeping	Service: Turnaround (daily or cycled)	Service: Complete
125,001 to 150,000	.019	.022	.063
150,001 to 175,000	.017	.020	.062
175,001 and up	.014	.016	.059

Ancillary service	Fee
Settlement Only (per month) ($2.00/journal entry plus)	$100.00
Minimum Processing Fee (per month)	40.00
Over-the-Counter Items (per item)	.035
No MICR/OTC	.50
Photocopies and Fascimiles	2.00
Encoding Errors	2.75
Certified Checks	1.00
Late Returns	.25
Invalid Returns	.50
Large Dollar Signature Verification	.50
Return Items—Indiana	1.75
Invalid Accounts	.50
Return Items—Michigan	2.25

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1987 NOW SERVICES)

Items per month	Service: Daily returns	Service: 24-hour delay	Service: Bulk file	Service: Truncation
0 to 50,000	$.026	$.025	$.024	$.021
50,001 to 100,000	.025	.024	.023	.020
100,001 to 200,000	.024	.023	.022	.019
200,001 to 300,000	.023	.022	.021	.018
300,001 to 400,000	.022	.021	.020	.017
400,001 to 500,000	.021	.020	.019	.016
500,001 to 750,000	.020	.019	.018	.015
750,001 to 1,000,000	.019	.018	.017	.014
1,000,001 to 1,250,000	.018	.017	.016	.013
1,250,001 to 1,500,000	.017	.016	.015	.012
1,500,001 and over	.016	.015	.014	.011

Ancillary service	Fee
Counter Items (per item)	$0.01
Return Items:	
0–100 items	4.00
101–500 items	3.50
501–1,000 items	3.00
1,001–2,500 items	2.50
2,501 or more items	2.00
Statement Preparation (per item)	.025
Photocopies (per item)	3.00
Facsimile of items (per page)	2.00
Cash Letter Facsimile (per page)	2.00
Special Sorts (per item)	.0075
Monthly Recap (per item)	.0025
Data Transmission (per item):	
0–10,000 items ($10 month minimum)	.004
10–001–50,000 items ($50 month minimum)	.004
50,001–100,000 items (no minimum)	.003
100,001 or more items (no minimum)	150.002
NOW settlement only (per month)	200.00

Ancillary service	Fee
NOW Minimum Monthly Charge (per month)	200.00

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1987 NOW Services)

Item processing—monthly volume level	Basic fee (truncated)	Daily [1,2] cycle	Cycle/ Monthly [2]	Return items	
				Monthly volume level	Fee
1 to 25,000	$.021	$.017	$.020	1–2,000	$2.50
25,001 to 50,000	.017	.013	.016	2,001–3,000	2.00
50,001 to 75,000	.015	.011	.014	3,001–4,000	1.50
75,001 to 175,000	.013	.009	.012	4,001,–7,500	1.00
175,001 to 400,000	.012	.008	.011	7,501–10,000	.75
400,001 to 750,000	.010	.007	.010	10,001 & Over	.50
750,001 to 1,100,000	.009	.006	.009		
1,100,001 to 1,500,000	.008	.005	.008		
1,500,001 to 4,000,000	.006	.004	.007		
4,000,001 to 6,500,000	.0058	.004	.007		
6,500,001 to 9,000,000	.0054	.003	.006		
9,000,001 & Over	.0052	.003	.006		

[1] 15% surcharge for same day daily return.
[2] Fees for daily and cycle/monthly return are in addition to the basic fee.

Other Services

Service	Fee
Posting File (per item)	$.0005
Reject Re-entry (per reject)	.04
Stop Payments (per stop)	5.00
Large Dollar Notification (per notification)	3.00
Photocopies/Microfilm Copies (per copy)	2.75
Counter Items With Microfilm (per item)	.04
Counter Items Without Micro Encoding (per item)	.10
Original Item Return (per item)	2.75
Certified Checks (per item)	.50
Signature Verification (per page)	1.00
Fascimile Transmission (per transmission)	1.50
Telephone Advice on Missing Account No. (per item)	.50
Telephone Check Inquiry (per inquiry)	1.00
Daily Settlement Reporting (per month)	25.00
Microfiche—Monthly Reports (per month)	25.00
Microfilm (per item)	.01
Research/Audit (per hour)	20.00

Minimum charge of $250.00 per month will apply for total NOW services.

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1987 NOW SERVICES)

Basic service-items/month	Service	
	Cycle-Daily	Truncated
Tier 1: 0 to 50,000	$.0325	$.0275
Tier 2: 50,001 to 100,000	.0300	.0250
Tier 3: 100,001 to 150,000	.0250	.0200
Tier 4: 150,001 to 200,000	.0200	.0150
Tier 5: 200,001 to 500,000	.0150	.0100
Tier 6: 500,001 to 1,000,000	.0100	.0075
Tier 7: 1,000,000 and Over	.0080	.0050
Commercial Accounts (additional per item)		.0200
Counter Items Integration (per item)		.0325
Counter Items (per item capture/microfilm only)		.0100

	Items/Month	
Return Items:		
Tier 1	1–500	$1.50
Tier 2	501 & Over	1.00

Note: Does not include Federal Reserve Bank surcharges which are passed through to our customers.

Special services (per item)	Fee
Photocopies	$.50
Account Number Rejects	(1)
Original Check Retrieval (per check)	1.50
Settlement Only (non-processing customers per month)	50.00
Postage Costs	(2)

[1] No Charge.
[2] Actual costs.

DISTRICT 10.—FEDERAL HOME LOAN BANK OF TOPEKA (1987 NOW SERVICES)

Return items per month	Fee per item
Processing fees:	
1 to 50	$2.50
51 to 2,500	1.00
2,501 to 4,000	.75
4,001 to 5,000	.50
5,001 to 6,000	.50
6,001 to 8,000	.25
8,001 to 12,000	.20
12,001 & over	.15

Items per month	Truncated	Cycled
1 to 10,000 (per item)	$.020	$.035
10,001 to 25,000 (per item)	.018	.034
25,001 to 50,000 (per item)	.015	.031
50,001 to 100,000 (per item)	.013	.026
100,001 to 200,000 (per item)	.011	.020
200,001 to 250,000 (per item)	.011	.020
250,001 to 300,000 (per item)	.010	.015
300,001 to 500,000 (per item)	.010	.015
500,001 to 750,000 (per item)	.009	.013
750,001 to 1,000,000 (per item)	.008	.011
1,000,001 & over (per item)	.007	.010

Other services	Fee
Minimum Monthly Processing Fee	$500.00
Settlement—(w/FHLB processing)	(1)
Settlement Only (per month)	100.00
Item Retrieval (Photocopy—per item)	2.00
Mass Photocopy Requests (per hour)	12.00
(per item)	.015
Over-The-Counter Items (Microfilmed and Filed—per item)	.03
Facsimile Transmissions (listing of paid items—per transmission)	1.50
Large Item Return Notification (per item over $2,500)	3.00

[1] No charge.

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1987 NOW Services)

Service	Volume price based on total items per month		
	0 to 250,000	250,001 to 750,000	750,000 plus
Basic capture service (Min. charge $500/mo.):			
Capture/finesort/microfilm	$0.042	$0.037	$0.032
Return item processing	2.00	1.75	1.50
Comprehensive NOW Service (Min. charge $750/mo.)			
Capture/file/microfilm/finesort	.042	.037	.032
Statement preparation (truncated)	.15	.14	.13
Statement preparation (standard)	.35	.30	.28
Return item processing	2.00	1.75	1.50
Over-the-counter items	.045	.045	.045
Statement inserts	.03	.03	.03

Miscellaneous services	Fee
Late return item transmission—after 2:00 p.m. (per item)	$.25
Second request on previously reconciled adjustment (per occurrence)	10.00
Truncated item retrieval (per item)	3.00
Generic envelopes (each)	.025
Reconciliation of member books—special research (per hour)	25.00
Microfilm—second copy of film daily (per month)	75.00
—special request copy (per copy)	5.00
Same day microfiche—2 copies with hardcopy processed item listing and exceeded dollar report (per month)	75.00
—hardcopy exceeded dollar report only (per month)	65.00
—additional microfiche (per copy)	1.00
Special fine sort (per item)	.04
Photocopies (per copy)	2.50
Non-standard statement inserts (per insert)	.05
MICR line alterations (per item)	4.00
DDA Account Maintenance Fee:	
Regular DDA Account (per month)	10.00
Zero-Balance Account (per month)	25.00
Supplementary Service Fee:	
Thirty day advance notice is required on all branch sales, branch mergers, branch acquisitions or service bureau changes.	
Custom Programming:	
1. Breakout of items by routing transit number and/or branch number (incl. listing)	2,000.00
2. Breakout and capture of items (Processed items list/microfilm/commingled with other items for service bureau)	3,000.00
3. Breakout, capture, and separate tape produced, including above items	4,500.00
4. Selective account programming (maximum 50 accounts) in addition to regular programming requirements	1,500.00
5. One-half of the original programming fee will be assessed in the event of a cancellation notice given less than 7 days in advance of effective date	
Statement Handling:	
Set-up fee/branch outsort of items	250.00
Standard statement rendition (close-out statements) (each)	.50
Non-standard statement rendition:	
—first 90 days (each)	.75
—after 90 days (each)	1.00

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1987 NOW SERVICES)

Service item	Fee
Base Per Item Fees:	
Daily Return of Items to Member (per item)	$0.025
Truncation of all Items by Bank (per item)	.025
Bulk File of Items, Returned to Member (per item)	.030
Bulk File of Items with Statement Handling (per item)	.050
Truncated Account Statement Handling (per statement)	.060
Volume Credits Per Item:	
25,001 to 50,000 items per month (per item)	.0025
50,001 to 75,000 items per month (per item)	.0025
75,001 to 100,000 items per month (per item)	.0025
100,001 to 200,000 items per month (per item)	.0025
200,001 to 400,000 items per month (per item)	.0050
400,001 to 600,000 items per month (per item)	.0050
600,001 or more items per month (per item)	.0025

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1987 NOW SERVICES)—Continued

Service item	Fee
Other Fees:	
Large Dollar Signature and Other Verifications (each)	.75
Return (NSFs, etc.) Item Handling (each)	.80
Photocopy Requests (NOW User) (each)	1.00
Research Requests (NOW User) (each)	1.00
Photocopy Requests (Non-User) (each)	5.00
Research Requests (Non-User) (each)	5.00
Special Fine Sorts (per item)	.01
Burst or Fold only for Statements (per statement) (Minimum of $30.00 per month)	.005

Schedule B: Demand Deposit and Other Services (1987 DDA Services)

DISTRICT 1.—FEDERAL HOME LOAN BANK OF BOSTON

Services	Fee
Checks and Items Paid (per item)	$.14
Deposits (per item)	.20
Debit/Credit Memos:	
Federal Reserve Settlement (per item) [1]	.40
Internal Transfers and Zero Balance Transfers	([2])
Others Transfers (per transfer)	.10
Domestic Wire Transfers:	
In (per wire)	4.00
Out (per wire)	6.50
Telephone Advices	([2])
International Wire Transfers	([3])
Account Maintenance (per month)	6.50
Special Statements (per statement)	2.50
Stop Payment Orders (per item)	8.50
Account Reconciliation:	
Paper Issues (per item)	.065
Magnetic Tape Issues (per item)	.035
Paid Only Reconcilement, Daily Advices, Monthly Reports, Audit Confirmations, Voided Items Input, Zero-Balance Transfer & Fine Sort of Items	([2])
Look-up and Photocopies of Checks (per item)	2.50
Truncation (per item)	.01
Depository Transfer Service (per item)	.20

[1] Federal Reserve Settlements include ACH, Series E-Bond Redemption, Cash Letter Settlements (Inclearings and Outclearings), Regulation D Reserve Pass-Throughs, Treasury Tax and Loan Settlements.

[2] No charge.

[3] Fee varies based on current international rates and cable remittance fees.

Notes: All prices are subject to change.

All collected IDEAL WAY deposits earn immediate interest paid in hard dollars monthly via credit to the member's account at month end. Interest rates are set daily.

Fees for services are paid in hard dollars monthly via a debt to the member's account.

No reserve requirements.

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1987 DDA SERVICES)

Service	Fee	
Per Item Fees **Deposit Services**	Unencoded	Encoded
First 100,000 items/month	$.070	$.050
100,001 to 300,000 items/month	.065	.045
300,001 plus items/month	.060	.040
Early Delivery Discount (weekdays)		
5:30 p.m. Deadline	.015	.010
7:00 p.m. Deadline	.005	.005
Special Service Fees		
Saturday Premium (per item)		$.01
Cash Letter Deposit (per deposit)		.50

DISTRICT 2.—FEDERAL HOME LOAN BANK OF NEW YORK (1987 DDA SERVICES)—Continued

Service	Fee
Return Item (per item)	1.25
Return Item (underscored) (per item)	8.75
Domestic Collections (per item)	15.00
Foreign Collection (per item)	8.00
Bond Collection (minimum)	40.00
Return Coupons (per return)	6.50
Unendorsed Return Coupons (per return)	15.00
Security Coupon Collection (per envolope)	3.50
Photocopies (per copy)	5.00
Savings Bond Redemption (per transmittal)	3.00
Reject Repairs (encoded only per item)	.10
Lockbox Service	
Remittance Processing (per item)	$.125
Check Deposit (per check)	.050
Return Item (per check)	1.250
Exception Item (per item)	.100
Photocopies (per copy)	5.000
Set-Up Fees	
Coupon Formats (per format)	250.00
Data Center Programming (per data center)	250.00
Daily Reports Microfiche (per item)	.001
Daily Reports Microfiche—Additional copies per month (per set)	15.00
Coin & Currency Service	
Shipments	([1])
Cash Order [2] (per order)	$10.00
Cash Return (per return)	10.00
Rolled Coin (per roll)	.06
Deposits	
Currency Verification (per $1000)	.70
Coin Verification (loose coin) (per bag)	.70
Coin Verification (rolled coin) (per bag)	10.00
Disbursement Services	
Checks and Money Orders	
First 10,000 items/month (per item)	$.24
10,001 to 25,000 (per item)	.17
25,001 plus items/month (per item)	.13
Zero Reconcilement Premium	
Issuance reported via magnetic tape (per item)	.03
Issuance reported via paper (per item)	.05
Funds Transfer	
Wires In (per wire)	$2.00
Wires Out (per wire)	8.00
Safekeeping Services	
Maintenance (less than 25 securities) (per month)	$33.00
(more than 25 securities) (per month)	75.00
Per Item Charge (physical securities) (per month)	5.00
(book entries) (per month)	2.50
Purchases and Sales (per transaction)	30.00
Maturities (per transaction)	10.00
Coupons (per transaction)	4.00
Miscellaneous Correspondent Services	
Depository Transfer Checks (per check)	$3.00
Savings Bond Redemption (per transmittal	3.00
Savings Bond Sales (per transmittal)	1.50
Federal Recurring Payments (per transaction)	3.00
Automated Clearing House Transactions (per transaction)	3.00
Treasury Tax and Loan Accounts (per transaction)	3.00
Electronic Daily Advice Reporting (EDAR) Consolidated Balance Reporting Transaction Detail	([3])
Settlement Only (per service) (per month)	250.00
Paper Items (per item)	1.50

[1] Price varies by location.
[2] Cash orders must be placed and funded one day prior to delivery.
[3] Fees for special services will be negotiated based on the number of transactions.

Note: A minimum monthly service charge of $250 applies to the Lockbox Service.

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1987 DDA SERVICES)

Service	Fee
Deposit Processing Service:	
Deposit Ticket Entry (per entry)	$0.25
Deposit Transfer Voucher (per entry)	1.75
Mail Deposit Ticket Entry (per entry)	2.25
Deposit Item Processing, Items Per Month:	
0–25,000 (per item)	.03250
25,001–58,500 (per item)	.03195
58,501–91,500 (per item)	.03140
91,501–125,000 (per item)	.03085
125,001–158,500 (per item)	.03030
158,501–191,500 (per item)	.02975
191,500 and over (per item)	.02920
Deposit Item Encoding, Items Per Month:	
0–25,000 (per item)	.0275
25,001–58,500 (per item)	.0270
58,501–91,500 (per item)	.0265
91,501–125,000 (per item)	.0260
125,001–158,500 (per item)	.0255
158,501–191,500 (per item)	.0250
191,500 and over (per item)	.0245
Deposit Item Return (per item)	1.50
Deposit Item Photocopy (per item)	3.00
Deposit Pickup (per pickup)	6.25
Check and Money Order Clearing Service:	
Clearing Item Processing (per item)	.11
Clearing Item Reconciliation Copy Processing:	
By Manual Input (per item)	.06
By Magnetic Tape Input (per item)	.03
Clearing Item Fine Sorting for Return with Bank Statements (per item)	.06
Stop Payment Orders (per entry)	9.75
Imprinting Checks and Money Orders	(1)
Standard Earnings Checks (per item)	.05
Wire Transfer of Funds:	
Outgoing Wires:	
Receiving Bank On-line (Federal Reserve) (per transfer)	6.00
Receiving Bank Off-line (Federal Reserve) (per transfer)	9.25
Incoming Wires (per transfer)	3.50
ACH Debit/Credit (per item)	.05
Lockbox Service:	
Lockbox Item Processing (per item)	.11
Deposit Item Processing (per item)	.035
Deposit Ticket Entry (per entry)	.25
Transportation (per month) (per institution)	20.00
Account Maintenance (per acct./month)	8.00
Account Overdraft Penalty	(2)
Collection Service:	
Foreign Items:	
West (per item, plus drawee bank charges)	10.00
East (per item, plus drawee bank charges)	5.00
Bonds (East Only) (per bond)	10.25
Bond Coupons:	
West (per envelope)	3.25
East (per envelope)	3.25
EASTERN COIN AND CURRENCY SERVICE:	
Requisition:	
Currency (per strap)	.25
Coin (per bag)	.95
Coin (per box)	2.50
Deposit:	
Currency/Food Coupons (per $1,000 or part thereof)	.70
Coin (per bag)	1.75
Transportation:	
Zone 1 (per stop)	18.50
Zone 2 (per stop)	25.50
WESTERN COIN AND CURRENCY SERVICE:	
Requisition:	
Currency (per $1,000 or part thereof)	.25
Coin (per box)	1.50
Deposit:	
Currency (per $1,000 or part thereof)	.70

DISTRICT 3.—FEDERAL HOME LOAN BANK OF PITTSBURGH (1987 DDA SERVICES)—Continued

Service	Fee
Coin:	
Unsorted (per $1,000 or part thereof)	7.50
Sorted (per $1,000 or part thereof)	1.25
Food Coupons:	
Unsorted (per $1,000 or part thereof)	3.00
Sorted (per $1,000 or part thereof)	1.75
Transportation:	
Western Pennsylvania (per stop)	11.85
West Virginia:	
Zone 1 (per stop)	29.50
Zone 2 (per stop)	35.20
SAFEKEEPING AND INVESTMENT SERVICE:	
Trade Executed (per transaction)	10.00
Receipt of Security:	
Physical Form (per transaction)	14.00
DTC (per transaction)	9.00
Book Entry (per transaction)	8.00
Delivery of Security:	
Physical Form (per transaction)	14.00
DTC (per transaction)	9.00
Book Entry (per transaction)	8.00
Redemption at Maturity:	
Physical Form (per transaction)	14.00
DTC (per transaction)	9.00
Book Entry (per transaction)	8.00
Income Collection:	
Physical Form (per collection, per issue)	4.00
DTC (per collection, per issue)	4.00
Book Entry (per collection, per issue)	2.00
Safekeeping Account Maintenance (per month)	10.00
Switch Account/Pledge:	
Physical Form (per transaction)	12.00
Book Entry (per transaction)	6.00
Retail-Repo Custodial Service (per month)	30.00
SAFEKEEPING CHARGE FOR ADVANCE COLLATERAL:	
Assignment of Collateral for Outstanding Advances, Advance Commitments, Letters of Credit, and Interest Rate Swaps	[3]
Physical Delivery of Collateral for Outstanding Advances, Advance Commitments, Letters of Credit, and Interest Rate Swaps	[4]

[1] Direct cost pass-through from supplier.
[2] Greater of $75 or the interest on the amount of the overdraft calculated at a daily interest rate that is equal to the highest advance rate plus 3%.
[3] Greater of $2.00 per million or $10.00 per month.
[4] Greater of $4.00 per million or $10.00 per month.

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1987 DDA SERVICES)

Service	Fee
Checks paid [1] (per item):	
Monthly statement with items fine sorted	$0.12
Monthly statement with items truncated	.08
Photocopies (non-truncated accounts only) (per item)	2.00
Stop payment (per item)	8.00
Without entry items	[2] 3.50
Deposit Transfer Checks (DTC) (per item)	4.00
Wire transfers:	
In (per item)	[3] 3.00
Out (per item)	[3] 4.00
Phone advice (per item)	[3] 2.50
Account reconciliation service:	
Full reconciliation—magnetic tape ($20.00 min./mo.) (per issue)	.0325
Full reconciliation—paper issue ($20.00 min./ mo.):	
Encoded amounts (per issue)	.0475
Unencoded amounts (per issue)	.07
Partial reconciliation ($10.00 min./mo.) (per paid item)	.03
Deposit processing:	
Unencoded checks (per item)	[3] .06
Encoded checks (per item)	[3] .04
Foreign checks (per item)	3.50
Bond coupons (per envelope)	3.50

DISTRICT 4.—FEDERAL HOME LOAN BANK OF ATLANTA (1987 DDA SERVICES)—Continued

Service	Fee
Deposited checks returned (per entry)	2.50
Automated Clearinghouse (ACH) Service:	
Originating—$15.00 per tape plus (per item)	.07
Receiving—$100.00 settlement per month plus (per item)	.05
Settlement only services:	
Automated Clearinghouse (ACH) (per month)	100.00
Currency and Coin (per month)	100.00
Treasury Tax and Loan (TT&L) (per entry)	3.50
Savings Bonds (per entry)	3.50
Deposit of items at Fed (per month)	100.00
Non-cash collections (per entry)	3.50
Currency and coin service (full): $100.00 settlement/month plus (per order)	3.50

[1] The checks paid charge includes at no additional charge: Monthly account maintenance, internal transfers, special statement drops, and return of items not paid.

[2] A "Without Entry Item" is a check which is sent back to the depositing institution to secure proper endorsement or to obtain a refund for a forged endorsement or signature.

[3] Federal Reserve charges are reflected in these prices. Any changes in Federal Reserve prices may result in adjustments to these prices.

Notes: Overdrafts incur a penalty calculated at 4% over the current short-term variable advance rate, with a minimum charge of $50.00 per occurrence.

Check printing costs are charged directly to the institution.

Special requests (i.e., 50 or more items per photocopy request, etc.) will be charged on a basis of $25.00 per hour.

Magnetic tapes sent to members and not returned to the Bank within 90 days will be billed at $12.00 per tape.

DISTRICT 5.—FEDERAL HOME LOAN BANK OF CINCINNATI (1987 DDA SERVICES)

Demand deposit account services	Per item charge
Reconciled Paid Items	$.075
Magnetic Tape Reconciliation	.045
Advice Reconciliation	.045
Fine Sorting	.01
Check and Money Order Truncation	[1]
Stop Payments	6.00
Wire Transfer-In	2.00
Wire Transfer-In—Telephone Confirmation	3.00
Wire Transfer-Out	5.00
Charges	.12
Credits	.12
Photocopies	1.00
Large Dollar Return Notification	2.00
Settlement Agent with Federal Reserve:	
ACH (per active month)	100.00
Treasury Tax and Loan (per active month)	100.00
Bond Activity (per active month)	100.00
Currency and Coin (per active month)	100.00
Check Deposits (per active month)	200.00

Settlement day option	Per item charge	Earnings incentive
Money Orders:		
1-Day	$0.01	1.5 days.
2-Day	0.03	[2] -0-
3-Day	0.05	[2] -0-
Tuesday Weekly	0.09	[2] -0-
Official Checks:		
1-Day	0.01	2.5 days.[3]

Settlement day option	Per item charge	Earnings incentive
2-Day	0.03	.75 days.[3]
Special Transfer Account:		
2-Day	.10	([3]) -0-

If checks are needed to transfer member's balances to other demand accounts or to satisfy internal bookkeeping requirements, the following Alternative Disbursement option is provided:

Check deposit service—Cincinnati Operations Center	Fee	
	Unencoded	Encoded
Cincinnati City	$.0275	$.015
Cincinnati RCPC (Special)	.0275	.015
U.S. Treasury	.0275	.015
Cincinnati RCPC	.0475	.035
Columbus City/RCPC	.0475	.035
Louisville City/RCPC	.0475	.035
Other FRB (1-Day)	.0825	.070
Other FRB (2-Day)	.0925	.080

Volume discounts on all items when total deposited items fall within below listed categories:

Discounts	Monthly volume range
7.5%	100,001-200,000
15.0%	200,000 +

Additional services	Per item charge
Photocopy (per item)	$1.00
Dishonored Items:	
Returned to Association (per item)	2.00
Automatically Re-deposited	([4])
Non-Cach Collection Service—Minimum:	
Non-Cash Item (per item)	5.00
Security Coupon Collection (per envelope)	5.00
Coupon Return Item (per item)	10.00
Foreign Item (per item)	5.00
Food Stamp Cash Letter (per cash letter)	1.00
Municipal Bonds (per item)	5.00
U.S. Treasury and Gov't Agency Coupons	([5])
Depository Transfer Checks (DTC) (per item)	5.00
Cash Letter Fee (per letter)	([6]) .50

Check deposit service—Cleveland Operations Center	Fee	
	Unencoded	Encoded
Cleveland City	$.0275	$.015
Cleveland RCPC (Special)	.0275	.015
U.S. Treasury	.0275	.015
Cleveland RCPC	.0475	.035
Columbus City/RCPC	.0475	.035

Check deposit service—Cleveland Operations Center	Fee	
	Unencoded	Encoded
Other FRB	.0825	.070

Volume discounts on all items when total deposited items fall within below listed categories:

Discount	Monthly volume range
7.5%	100,001–200,000
15.0%	200,000+

Additional services	Per item Charge
Photocopy (per item)	$1.00
Dishonored Items:	
Returned to Association (per item)	2.00
Automatically Re-deposited	(7)
Non-Cash Collection Service—Minimum:	
Non-Cash Item (per item)	5.00
Security Coupon Collection (per envelope)	5.00
Coupon Return Item (per item)	10.00
Foreign Item (per item)	5.00
Food Stamp Cash Letter (per cash letter)	1.00
Municipal Bonds (per item)	5.00
U.S. Treasury and Gov't Agency Coupons	(8)
Depository Transfer Checks (DTC) (per item)	5.00
Cash Letter Fee (per letter)	(9) .50

Check deposit service—Nashville Operations Center	Fee	
	Unencoded	Encoded
Nashville City	$.0375	$.025
Nashville RCPC	.0475	.035
U.S. Treasury	.0275	.015
Nashville NOW On-Us	.0275	.015
DDA On-Us	.0275	.015
Louisville RCPC (10)	.0675	.055
Other FRC	.0775	.065

Volume discounts on all items when total deposited items fall within below listed categories:

Discounts	Monthly volume range
7.5%	100,001–200,000
15.0%	200,000+

Additional services	Per item charge
Photocopy (per item)	$1.00
Dishonored Items:	
Returned to Association (per item)	2.00
Automatically Re-deposited	(11)
Non-Cash Collection Service—Minimum:	
Non-Cash Item (per item)	5.00

Additional services	Per item charge
Security Coupon Collection (per envelope)	5.00
Coupon Return Item (per item)	10.00
Foreign Item (per item)	5.00
Food Stamp Collection (per cash letter)	1.00
Municipal Bonds (per item)	5.00
U.S. Treasury and Gov't Agency Coupons	([12])
Depository Transfer Checks (DTC) (per item)	5.00
Cash Letter Fee (per letter)	([13]) .50

Preparation charge	Fee
Currenty and coin service—Members in Kentucky & Ohio:	
Currency (per order)	$8.25
Wrapped coin (per box)	1.75
Deposits of Coin and Currency:	
Strapped currency (per strapped deposit)	5.00
Currency (per mixed or unfilled straps)	6.00
Coin-loss (same denomination) (per bag)	2.00
Coin-loss (mixed denomination) (per bag)	4.00
Coin-wrapped (same denomination) (per bag)	4.00
Coin-wrapped (mixed denomination) (per bag)	8.00
Members in Nashville Federal Reserve Territory:	
Preparation Charge:	
Currency and/or loose coin (per order)	2.50
Wrapped coin (per roll)	.0375
Deposits of Currency and Coin (per occurrence)	1.00
Safekeeping Service—Receive or Deliver (Per Transaction):	
Book Entry	15.00
Physical	25.00
Redemption (Per Transaction):	
Book Entry	15.00
Physical	25.00
Interest Coupons (Per Transaction)	$4.00
Pledges (Per Transaction):	
Book Entry	15.00
Physical	25.00
Account Maintenance (per month)	15.00
Safekeeping Account Maintenance (per month)	25.00
Retail Repurchase Account Maintenance (per month)	15.00
Contemporaneous Reserve Settlement (per month)	$100.00

Preparation charge	Fee
Lockbox Services:	
OCR Standard Item Fee	$.15
Includes: Courier pickup at lockbox, Microfilming of check and document, Transmission to service bureau, Management reports, Check deposit fee (encoding & clearing), Certain exception handling.	
Additional Services/Fees:	
Lockbox rental	[14]
Photocopies (per copy)	1.00
Hot File Update (Add or Delete) (per update)	.50
Hot File Update (Magnetic Tape) (per tape)	10.00
Courier/postage	[14]
Dishonored Check Item:	
a. Returned to Association (per item)	2.00
b. Automatically Re-deposited (per item)	[15]
Reject or Unmatched Item	[16]
Other desired services	[14]

[1] No charge.
[2] The earnings incentive is an interest payment on float days which is credited monthly to the issuing association's demand account.
[3] The earnings incentive is an interest payment on float days which is credited monthly to the issuing association's demand account.
[4] Check deposit per item fee.
[5] No charge.
[6] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[7] Check deposit per item fee.
[8] No charge.
[9] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[10] Louisville RCPC items deposited within a mixed cash letter by 7:00 p.m. Monday–Thursday.
[11] Check deposit per item fee.
[12] No charge.
[13] $.25 per "Cash Letter" when depositing over 100,000 items per month.
[14] Actual cost.
[15] The per item check processing fee for the member's region.
[16] No fee.

DISTRICT 6.—FEDERAL HOME LOAN BANK OF INDIANAPOLIS (1987 DDA SERVICES)

Cash management service	Paid check charge	Advices	
		Paper	Tape
Quarterly transaction volume:			
First 3,750	$.13	$.05	$.025
Next 9,000	.11	.04	.02
Next 12,250	.09	.04	.02
Next 25,000	.08	.03	.015
All over 50,000	.07	.02	.01

Stop payments (per stop)	$6.00
Maintenance fee (per month)	25.00
Photocopies (per copy)	$2.00
Fine sort numeric sequence (per item)	.016

Collected balances will earn at an interest rate that approximates the 91 day Treasury Bill rate.

Other services	Michigan	Indiana
Transit item deposit program:		
Preencoded:		
City items	$.021	$.02
RCPC items	.021	.02
Other district items	.052	.05
Encoding errors	.30	.30
Unencoded:		
City items	.08	.08
RCPC items	.08	.08
O.D. items	.08	.08
Return items	.75	.75
Coupons (per envelope)	3.20	4.25
Lockbox services:		
Per deposit item received	.25	.35
Truncation of coupons	.02	.02
Coin and currency program:		
Metropolitan areas of Indianapolis & Detroit—per delivery by armored truck service	$25.00	$28.00
Outside metropolitan areas:		
Fees vary depending upon the distances involved		
Rolled Coin (per roll)	.35	.35

	Fee
Wire transfer services:	
In (per transfer) domestic	$2.00
Out (per transfer) domestic	4.00
International wires	17.00
Depository transfer checks (per check	2.00
Automated Clearinghouse (ACH) service:	
Per tape	5.00
Per item (originator)	.02
Settlement only	50.00
Listing (paper)	5.00
Treasury tax and loan settlement service:	
Per transaction	2.00
Charge card transaction:	
Per transaction	1.50

DISTRICT 7.—FEDERAL HOME LOAN BANK OF CHICAGO (1987 DDA SERVICES)

Services, monthly volume	Fee		
	Nontruncated accounts		Truncated accounts
A. *Demand Accounts:*			
Items Processed:			
0 to 7,500	$0.110		$0.090
7,501 to 10,000	.100		.080
10,001 to 12,500	.090		.070
12,501 to 15,000	.080		.060
15,001 to 25,000	.075		.055
25,001 and over	.070		.050
Alternative Demand Disbursement Service:			
800 Series—Next Day Remittance		(1)	
900 Series—Three Day Remittance (per item issued)		$0.050	
Ancillary Services Fees:			
Special Sorts (per item)		.0075	
Recons:			
Non-Encoded Items (per item)		.055	
Encoded Items (per item)		.020	
Magnetic Tape Items (per item)		.020	
Stop Payments (per stop placed)		7.00	
Photocopies (per item)		3.00	
Account Maintenance (per account per month)		10.00	
Additional Statements (per statement)		5.00	
Request for Money Order Forms		(2)	
Postage/Courier		(2)	
ACH Services		(2)	
Dial-A-Statement:			
Per month or		25.00	
Per year or		250.00	
Per statement		1.00	
B. *Deposit Processing:*			
Checks Deposit Drawn on:			
Federal Home Loan Bank of Chicago, FHLB Intercept Customers:			
Postal Money Orders		.015	
U.S. Treasury Check		.015	
City of Chicago Financial Institutions:			
0–10,000		.030	
10,001–25,000		.028	
25,001 and over		.026	
Non-Federal Reserve Chicago RCPC (clearinghouse items):			
0–10,000		.036	
10,001–25,000		.0.34	
25,001 and over		.032	
Chicago RCPC Financial Institutions (Routing Numbers 0711, 0712, 0719, 2711, 2712, 1719):			
0–10,000		.048	
10,001–25,000		.046	
25,001 and over		.044	
Transit Items—Other Federal Reserve Office Financial Institutions:			
0–10,000		.075	
10,001–25,000		.073	
25,001 and over		.071	
Selected High Dollar Endpoints		.035	
Ancillary Service Fees:			
Check Encoding (per item)		.035	
Return Items:			
Re-Deposits		(3)	
Charge Backs (per item)		1.00	
Noncash Collection Items:			
Coupons (per envelope)		2.50	
Foreign Items		(4)	
Food Stamps Deposited (per item)		.02	
Coin and Currency Orders (per copy/per branch)		2.00	
Visa/Mastercard Deposits		2.00	

	Minneapolis region	
	Encoded items	Non-encoded items
City and Local	$0.0275	$0.0500
Regional RCPC	.0450	.0675
Regional Premium	.0575	.0800
County	.0525	.0750
Transit	.0875	.1100

	St. Louis region	
	Encoded items	Non-encoded items
City and Local	$0.0345	$0.0570
Regional RCPC	.0375	.0600
Regional Premium	.0425	.0650
County	.0400	.0625
Transit	.0745	.0970

C. *Money Transfers:*	
Wire Transfers:	
In	$3.00
Repetative Wires	4.00
Out	4.00
Telephone Advice	2.00
Quick Deposit Drafts	4.00
D. *Safekeeping:*	
Receipt or Delivery:	
Book Entry Item	30.00
Physical Item	40.00
Coupon Collection	5.00
Collection at Maturity	[5]
Annual Maintenance (billed quarterly):	
Par Amount Under $5 million	150.00
Par Amount $5 million or Over (per million)	40.00
Monthly Reports	[5]
Registration Fees	[6]
Transfer to or from Pledge Status	60.00
Maintenance of Collateral for FHLB Advances:	
Place Note and Mortgage in Vault:	
Deliver with listing only	1.00
Deliver with listing and computer tape	.75
Remove Note and Mortgage from Vault	.75
Annual Maintenance Charge (per quarter)	.30

[1] No charge. [2] Actual cost. [3] No charge. [4] Actual cost. [5] No charge. [6] Actual cost.

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1987 DDA SERVICES)

DDA Service Activity	Fee
Account Maintenance	$6.00
Account Reconciliation	6.00
Check Printing Costs	[1]
Drafts Paid:	
Truncated	.045
Non-Truncated	.055
Controlled Disbursement	.080
Stop Payments	7.00
Ledger Credits	.30
Ledger Debits	.20
Bankwires in:	
—Without Phone Advice	2.50
—With Phone Advice	3.50
Bankwires Out:	
—Without Phone Advice	4.00

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1987 DDA SERVICES)—Continued

DDA Service Activity	Fee
—With Phone Advice	6.00
Special Cut-off Statements	3.00
Account Reconciliation Tape Issues	.02
Issue Encoding	.045
Pre-encoded Issues	.030
Safekeeping Transactions	10.00
ACH Transaction	(1)
Miscellaneous Charges/Special Processing	(1)
Pledge, Agreements	20.00
ACH Settlement Charges	.50
Entry Fee for all items	.003
Re-enter Rejects	.04
Encoding Fee (Des Moines, Minneapolis & St. Louis)	.0225
Encoding Fee (Kansas City)	.025
Data Transmission (per transmission)	1.50
Fine Sort "on-us" items	.005
Printed Reports—Standard (per report)	1.00
plus (per page)	.05
Optional	(2)
plus (per page)	.05
Minimum monthly billing	40.00
Facsimile Transaction (per transmission)	1.50
Account Transaction Info. (per call)	1.00
Miscellaneous Charges/Special Processing	(3)
Food Stamps Deposited (Des Moines, Kansas City, and St. Louis)	.02
Food Stamps Deposited (Minneapolis)	.04
Coupons/Per Envelope	2.50

Deposited Item Charges	Minneapolis	Des Moines	St. Louis	Kansas City
Local	$.020	$.025	$.027	$.019
Regional	.0375	.035	.030	.....
Regional Premium	.050	.04	.035	.....
Country	.045	.....	.0325	.029
Out of State	.080	.0525	.067	.079

Deposit Processing Fee Schedule

Check Clearing Fees	Encoded	Unencoded
a. Des Moines Center (4)		
Local	$.025	$.0475
Regional	.035	.0575
Regional—Premium	.040	.0625
Transit	.0525	.075
b. Minneapolis Center (5)		
Local	.020	.$0425
Regional	.0375	.060
Regional—Premium	.050	.0725
Country	.045	0675
Transit	.080	1025
c. Kansas City Center (5)		
Local	.019	.044
Country	.029	.054
Transit	.079	.104
d. St. Louis Center (5)		
Local	.027	.0495
Regional	.030	.0525
Regional—Premium	.035	.0575
Country	.0325	.055
Transit	.067	.0895

Other Fees at the Four	Fee
Regional Processing Centers:	
Return Items	$.75
Food Coupons	.02
Bond Coupons (per envelope)	2.50
Large Dollar Notification (Reg. J) (per item)	3.00

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1987 DDA SERVICES)—Continued

DDA Service Activity	Fee
Return Items-Special Handling:	
Subtotal by office	1.50
Individual Entries (per entry)	.50
Telephone Notification Less Than $2,500 (per item)	.60
Balance/Availability Reporting (per month)	30.00
Endpoint Analysis (per day)	20.00
Non-Processable Items (Pre-Encoded) (per item)	.15
Photocopies (per copy)	2.75
Research (per hour)	20.00
Currency/Coin Orders	2.00
Foreign Currency Deposits (per deposit)	5.00
Foreign Currency Orders (per order)	2.50
Per Cash Deposit (Credit Tickets):	
Standard Packaging	.50
Non-Standard Packaging	10.00
Special Cash Orders/ Deposits	([6])
Collection Item (Non-Local Banks) (per item)	3.50
Federal Reserve Bank Settlement Entries (per entry)	.50
Additional Services (St. Louis Center)	
Package Sort I:	
(Pre-encoded items representing 100% of association's daily work)	
Local	$.0195
Regional	.023
Country	.029
Transit	.067
Package Sort II:	
(Pre-encoded items that do not represent 100% of association's daily work)	
Local	.024
Regional	.024
Country	.029
Transit	.0675
Package Sort III:	
(Deposits containing only pre-encoded transit items)	
(items not payable in the St. Louis Fed. zone)	
Pre-encoded Transit items	.0725
Statement Rendering Service	**Fee**
Statement Per Month-Non-Truncated:	
First 5,000	$.18
Next 5,000	.165
Over 10,000	.15
Statement Per Month-Truncated	.05
Statement Inserts	.005
Surcharge for One Cycle Per Month (percentage)	10%
Fine sort counter items for statement insertion	.005
Sort counter items without MICR	.02
Lockbox Service	**Fee**
1. Basic Service ([7]):	
Mortgage	$.12-.20
Consumer	.09-.13
Retail-Commercial	.07-.15
Wholesale-Commercial	.15-.45
Credit Card	.07-.11
Data Capture and Transit	.015-.030
2. Item Preparation Charge; Data Entry	.05
3. Microfilm Remittances and/or Checks	.01
4. Credit/Posting Adjustment Advise	.25
5. Photocopies	
Recurring	.05
On Request	.25
6. Telecopies	
Recurring	.85
On Request	1.50
7. Microfilm Copies	2.75
8. Payment Discount	.25
9. Telephone Inquiry or Notification	1.00
10. Foreign Item Processing	
U.S. Dollars	.75

DISTRICT 8.—FEDERAL HOME LOAN BANK OF DES MOINES (1987 DDA SERVICES)—Continued

DDA Service Activity	Fee
Foreign Currency	3.50
11. Process Cash Payment	1.00
12. Wire Transfer of Funds	6.50
13. Daily Float Summary (monthly charge)	50.00
14. Courier/Postage	[8]
15. Storage (Envelopes and remittance material retained unsorted for 14 days and destroyed)	[9]
16. Minimum Monthly Billing (execluding actual charges)	175.00
17. New Account Set-up [10]	50.00–500.00
18. Special-Services	[11]
Automated Clearing House ("ACH") and Electronic Funds Transfer ("EFT") Services	**Fee**
ACH Pass-Through (Receiving):	
1. Pick up ACH tape from local FRB and transmit/deliver to data processor (per tape)	$1.00
(plus per item)	.01
2. Process multiple tapes from FRB and transmit/deliver one consolidated tape to data processor (per tape)	1.00
(plus per item)	.01
3. Receive properly formatted ACH transmission from data processor and deliver to local FRB (per tape)	1.00
(plus per item)	.01
4. Produce system output tape (withut processing any input) (per tape)	1.00
ACH Origination File:	
Receive properly formatted ACH data entry tape from data processor for entry into Federal Reserve ACH system (per tape)	5.00
(plus per item)	.05
Reformat ACH File For Transmission:	
Receive ACH tape from local FRB or data processor and reformat for data transmission (i.e., change blocking function) (per tape—additional charge)	1.50
ACH File Creation:	
Receive unformatted source data from financial institution or data processor, create ACH file and enter into Federal Reserve ACH system. (Includes data conversion; i.e., keypunching) (per tape)	5.00
(plus per item)	.10
Surcharges For Next-Day Settlement (Credits & debits orginated) (per item)	.06
Warehouse entries for future settlement (per item)	.0025
Telephone advice (per day)	2.00
Messenger/delivery	[12]
Miscellaneous	[12]
Visa/Mastercard Processing Service	**Fee**
Monthly Settlement (Merchant Program, Cardholder Program, or both)	$55.00
Sales Drafts and Cash Advance Tickets Deposited	.01
Adjustments, Returns, Corrections, Income Distributions (All entries)	.50

NOTE—Fees will be charged through the members' account analysis.

[1] Actual cost.
[2] At a quoted rate.
[3] Actual cost.
[4] 10% discount per item on processing fees only is given when monthly volume exceeds 200,000 items.
[5] A 10% discount per item on processing fees only is given when monthly volume exceeds 200,000 items.
[6] Standard order fee plus actual charges.
[7] Open envelope; screen per instructions; and verify payee signature and amount. Record date on check, remittance, envelope or correspondence as requested. Balanced checks to remittances and post credits to account specified. A specific fee is negotiated in the ranges shown above depending upon the number and degree of difficulty of task requirements of individual members.
[8] Actual cost.
[9] Beyond 14 days price negotiated.
[10] A one time charge.
[11] Price negotiated.
[12] Actual/negotiated rate.

NOTE—Associations that have changed Data Processors and have more than one MICR account number corresponding to one statement account number are subject to additional fees.

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1987 DDA SERVICES)

Demand deposit account service	Fee
Checks/Money Orders paid:	
Checks Returned (per item)	$.15
Checks Truncated (per item)	.13
Reconciliation of Check/Money Order:	
—Magnetic tape (per item)	.02
—MICR (per item)	.07
Fine Sort (per item)	.006

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1987 DDA SERVICES)—Continued

Demand deposit account service	Fee
Credits/Adjustments (per item)	(1)
Wire Transfer:	
—In	2.00
—Out	4.00
Stop Payments (per item)	5.00
Exception Item Return (per item)	2.50
Depository Transfer Checks (per item)	4.00
Photocopy (per item)	2.50
Account Maintenance (for accounts with more than 1,000 transactions per month) (per association)	25.00
Voids	(1)
Credits/Adjustments	(1)
Account Activity Reporting	(2)
Checks/Money Order Forms (above standard check)	(3)
Paid Items Mailed to Association	(3)
Overdrafts (per daily occurrence and interest at special variable advance rate plus 3%)	50.00

	Deposit processing fees			
	Dallas	New Orleans	Little Rock	Houston
Deposit Items:				
Postal Money Orders, U.S. Treasury Checks (per item)	$.022	$.025	$.025	$.025
Local Items (per item)	.022	.025	.025	.025
RCPC Items (per item)	.026	.025	.035	.040
Other Fed Items (per item)	.065	.060	.0625	.065
Encoding Charge (per item)	.025	.025	.020	.025
Returned Items (per item)	1.50	1.50	1.50	1.50
Non-Cash Collection Services:				
Security Coupons (per envelope)	2.75	2.50	2.50	2.75
Food Stamps and Coupons (per deposit)	1.50	1.50	1.50	1.50
Foreign Items (per item)	6.50	6.50	2.50	6.50
All Others (Drafts, Etc.) (per item)	2.75	2.50	2.50	2.75

DISTRICT 9.—FEDERAL HOME LOAN BANK OF DALLAS (1986 DDA SERVICES)

Coin and currency services	Fees
Preparation and handling fees:	
Delivery ($5.00 minimum):	
Coin (per roll)	$.10
Currency (per strap)	.50
Deposit ($5.00 minimum):	
Coin (per bag)	.75
Currency (per strap)	.65
Emergency orders (additional per hour)	75.00
Security charge (per $1000 delivered or deposited)	.18
Delivery charges (a one-way transfer charge plus $.50 per bag of coin and/or currency picked up or delivered):	
Dallas, El Paso, Houston, or San Antonio delivery (per shipment)	20.00
All other in Texas ($20.00 plus) (per mile between Federal Reserve city and delivery point)	.12
Little Rock center deliveries	(4)
New Orleans city delivery (one-way) (per shipment)	15.00
All other in Louisiana (per round trip from New Orleans based on Louisiana tariffs)	40.00–75.00
Southern Mississippi (one-way per shipment)	45.00
Registered Mail	(5)
Delay of armored carrier (per fifteen (15) minute interval or fraction thereof)	18.00

Automated Clearing House ("ACH") Processing	Fees
Set-up fees:	
ACH standard format	$50.00
Non-standard format	500.00
Origination fees:	
ACH standard format (per tape)	15.00
Non-standard format (per tape)	30.00

Automated Clearing House ("ACH") Processing	Fees
Transaction fees ($50.00 minimum per month):	
Receiving debits/credits (per item)	.10
Originating debits/credits (per item)	.10
Manual return item advice (per item)	4.00
Format changes (per change)	500.00

Additional correspondent services	
Reserve pass-through services	[6]
Settlement services:	
NOW processing customers	[6]
All others (per month)	$50.00

[1] No charge.
[2] Toll free by telephone.
[3] Actual costs.
[4] Call FHLBank for price quote.
[5] Actual postage cost.
[6] No charge.

Note: Fees incurred in the process of collecting non-cash items will be passed through to the depositing institution. These charges will be added to the service fees shown above.

District 10.—Federal Home Loan Bank of Topeka (1987 DDA Services)

DDA Service	Fee
Full Service Demand Plus Accounting (includes Automatic Branch control reconciliation, reporting of full account activity) (per item):	
—Cycle	$.15
—Truncated	.12
Electronic Transmission of Disbursement	.10
Basic Demand Plus Accounting (standard summary statement, must be able to process magnetic tapes) (per item):	
—Cycle	.11
—Truncated	.08
Large Item Return Notification ($2,500 and over) (per item)	3.00
Treasury:	
Wire Transfers:	
Incoming (per item)	$2.00
Outgoing (per item)	4.00
Pass-Through Reserves (per month)	25.00
Transaction Fees:	
Federal Reserve Book-Entry Eligible Securities including Treasuries, Agencies, FNMA, FHLMC Mortgage-Backed Certificates (per receipt and redemption)	2.50
MBSCC Depository Eligible GNMA Mortgage-Backed Certificates (per receipt and redemption)	10.00
Physical Securities; DTC Eligible Securities and Book-Entry New York Federal Reserve Eligible Securities (per receipt and redemption)	40.00
Interest Payment Fees:	
Interest payments other than Mortgage-Backed Principal and Interest Payments	[1]
Mortgage-Backed Principal and Interest monthly payments (per advice)	2.50
Safekeeping Account Maintenance Fee (per month)	[2]
Segregation and Pledge Activity Fees:	
Segregated Account Maintenance (per association—per month)	[1]
Joint Custody Service (per receipt)	2.50
Pledge or Segregated Service (per receipt pledged or released)	10.00

Processing fees	Kansas City—Enc/Unenc	Oklahoma City—Enc/Unenc	Topeka—Enc/Unenc	Omaha—Enc/Unenc	Wichita—Enc/Unenc	Denver—Enc/Unenc
Deposit processing:						
Local	$.025/.05	$.025/.038	$.02/.033	$.025/.038	$.02/.04	$.015/.033
RCPC	.035/.06	.038/.051	.039/.052	.038/.051	.025/.045	.023/.041
Country	.035/.06	.038/.051	.039/.052	.038/.051	.025/.045	.029/.047
Transit	.085/.11	.067/.08	.067/.08	.067/.08	.075/.095	.067/.085

Returns (per item)	$.80
Collections (per item)	2.50
Coin and Currency (per phone call)	2.50
Courier and Armored Car Costs	(3)
Mass Photocopy Requests (per item)	12.00
(plus per item)	.15
Statement Matching:	
Truncated Statement	.05
Cycled Statement (per check up to 50 checks plus .01 per check thereafter)	.15
Insert	.01

[1] No charge.

[2] A monthly charge of 1/12 of 1/100 of 1% of par balance of the first $300 million of portfolio. A monthly charge of 1/12 of 1/200 of 1% on the balance over $300 million. Fee is calculated on the month-end par balance of each account. The fee is charged on the 15th day of tthe following month.

[3] Actual cost.

NOTES: FHLBank provides postage at cost and associations will provide latex envelopes. FHLBank provides deposit tickets at no charge and has no reserve requirements for DDA account balances.

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1987 DDA SERVICES)

Depository Services	Fee
Deposit Processing Services	
Depository Service Charges (minimum charge)	$300.00
Deposit Processing	
5:30 P.M. Deposit Deadline:	
Encoded items deposited [1]	
Mixed (per item)	.105
Group Sort (per item)	.15
Encoding Fee (per item)	.02
8:30 P.M. Deposit Deadline:	
Encoded Items Deposited	
Twelve District (per item)	.045
Out of Region (per item)	.08
Encoding Fee (per item)	.015
10:30 P.M. Deposit Deadline:	
Encoded Items Deposited	
Twelve District (per item)	.045
Out of Region (per item)	.08
Encoding Fee (per item)	0.02
Other Charges:	
Deposit Ticket (per ticket)	1.10
Commercial Deposits (per ticket)	1.10
Returned Items (per item)	1.00
End-Point Deposit Analyses Reports (per month)	30.00
Monthly Account Maintenance (per account)	15.00
Collection Services	
Clean Collection (per item)	7.50
Documentary Collection (per item)	15.00
Savings Bonds (per transmittal)	7.50
Coupon Collection (per envelope)	15.00
Foreign Drafts [2]	
Foreign Collection (per item)	20.00
Canadian Cash Letter (per item)	1.00
Returned Items (per item)	7.50
Food Coupons (per item)	.15
Coin and Currency Services	
Furnished ($3.00 per order, plus)	
Currency (per $1,000)	.85
Coin (per roll)	.07
Deposited ($1.50 per deposit)	
Currency (loose, per $1,000)	.90
Coin Ordered (per roll)	.09
Other Charges	
Late Cash Order (per order)	25.00
Adjustments over $5.00 (per adjustment)	5.00
Coordination of Transportation (per branch)	12.00
Basic Account Services	
Monthly Account Maintenance	
Regular Accounts (per account)	15.00

DISTRICT 11.—FEDERAL HOME LOAN BANK OF SAN FRANCISCO (1987 DDA SERVICES)—Continued

Depository Services	Fee
Zero Balance Accounts (per account)	30.00
Checks Paid (per item)	0.115
Checks Deposited (per item)	1.00
Items Returned (per item)	1.00
Stop Payments (per item)	7.50
Daily Statements	[3]
Out-of-Cycle	5.00
Photocopies (per copy)	3.00
ACH Debits/Credits (per settlement transaction)	0.25
Incoming Wires (per wire)	6.00
Photocopies (per wire)	3.00
Outgoing Wires (per wire)	9.00
Immediate Advice (per wire)	10.00
Book Transfers (per transaction)	6.00
Service Wire (per wire)	5.00
Passthrough Reserve Services (per month)	100.00
Overdraft Charges (minimum charge)	[4]
Special Research (per hour)	30.00
Account Reconcilement Services	
Full Reconciliation	
Monthly Account Maintenance	
Standard (per account)	50.00
Non-standard (per account)	75.00
Checks Paid (per item)	0.115
Truncated Checks (per item)	0.065
Issue Input Method	
MICR (per item)	0.115
Tape (per item)	0.055
Transmission Input (per transmission)	5.00
Partial Reconciliation	
Monthly Account Maintenance (per account)	30.00
Checks Paid (per item)	0.115
Truncated Checks (per item)	0.065
Miscellaneous Services	
Fine Sort (per item)	0.03
Microfilm (per roll)	10.00
Magnetic Tape Output (paid checks):	
(Per tape, plus)	25.00
(Per item)	.02
Data Transmission:	
(Per transmission, plus)	5.00
(Per item)	0.025
Stop Payment (per item)	7.50
Range Stops, less than 50 (per consecutive range)	25.00
Range Stops, greater than 50 (per consecutive range)	50.00
Microfiche Reports (per fiche)	3.00
Audit List of Issues (per list)	1.00

[1] A mixed presentment is defined as a cash letter for which 33 percent of the total number of items represents end points other than the five direct send banks. If desired, the nondirect send portion of the group can be presented on a separate cash letter for processing against a more favorably priced deadline (i.e., 8:30). This definition of "mixed" presentment will cause the deposits of two institutions to be reclassified to the higher priced "group" presentment for the 5:30 deadline.

[2] All Canadian items over $500 and all non-Canadian foreign items must be submitted as a foreign collection.

[3] No charge.

[4] Bank's Overnight Cash Needs Rate plus 2% (rate published by Bank's Credit Service.)

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1987 DDA SERVICES)

Service	Fee
Demand Accounts	
Monthly Account Maintenance (per account)	$4.00
Account Funding:	
ACH Cash Concentration Service (per transfer)	1.00
Wire Transfers:	
One in and one out each day	[1]
Additional incoming wires (per wire)	2.00
Additional outgoing wires (per wire)	3.00
International wires (per wire)	22.00
Customer wires (per wire)	3.00

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1987 DDA SERVICES)—Continued

Service	Fee
Mail-in Deposits (per deposit)	.25
Inter-Bank Account Transfers	(1)
Paid Items:	
CheckOne Account (per item)	.0775
CheckOne-Plus Account ($25.00 per tape, plus) (per item)	.0775
MasterOne Account, Mag Tape Input (per item)	.085
MasterOne Account, Check Copy Input (per item)	.105
Substandard MICR Item Manual posting (per item)	.25
Stop Payments:	
Prior to 2:30 pm PST deadline (per stop)	3.50
After 2:30 pm PST deadline (per stop)	5.00
Photocopy/Research Requests:	
Audit Request Item Research (per item)	.25
All Other Photocopy/Research	(1)
Large Dollar Verifications:	
$10,000 endorsement verification	(1)
$100,000 signature verification	(1)
Miscellaneous and Out of Pocket Expense	(2)
Pledged Securities (Collateral) Services Fee Schedule	
Service Item	
Monthly Account Maintenance	25.00
Custody:	
Book Entry (per security)	1.25
Definitive (per security)	2.25
Eurodollar (per security)	2.25
Receipt/Delivery/Redemption:	
Book Entry (per transaction)	12.50
Definitive (per transaction)	25.00
Eurodollar (per transaction)	35.00
Account Switch:	
Book-Entry, between a collateral account and a regular safekeeping account (per transaction)	12.50
Book Entry, between collateral accounts (per transaction)	15.50
Definitive, between a collateral account and a regular safekeeping account (per transaction)	25.00
Definitive, between collateral accounts (per transaction)	28.00
Income Collection:	
Principal and Interest payments (P&I) (per transaction)	5.00
Other income collections (per transaction)	(5)
Audit Verifications (per inquiry)	8.00
PC Interface per Month (includes all reports)	100.00
Miscellaneous and Out-of-Pocket Expenses Shipping, registration, etc	(6)
Securities Safekeeping Fee Schedule	
Monthly Account Maintenance	0.00
Custody:	
Book Entry (per security)	.75
Definitive (per security)	2.00
Eurodollar (per security)	2.00
Receipt/Delivery/Redemption:	
Book Entry (per transaction)	9.50
Definitive (per transaction)	22.50
Eurodollar (per transaction)	30.00
Account Switch:	
Book-Entry, between regular safekeeping accounts (per transaction)	9.50
Book Entry, between regular safekeeping account and a collateral account (per transaction)	12.50
Definitive, between regular safekeeping accounts (per transaction)	22.00
Definitive, between regular safekeeping account and a collateral account (per transaction)	25.00
Income Collection:	
Principal and Interest payments (P&I) (per transaction)	5.00
Other income collections (per transaction)	(3)
Audit Verifications (per inquiry)	8.00
PC Interface per Month (includes all reports)	100.00
Miscellaneous and Out-of-Pocket Expenses Shipping, registration, etc	(4)
Settlement Services	
ACH Settlement (per entry)	.25
Contemporaneous Reserve Settlement (per month)	25.00
NOW Account Settlement (per month)	125.00
Federal Reserve Settlement (per month)	125.00

DISTRICT 12.—FEDERAL HOME LOAN BANK OF SEATTLE (1987 DDA SERVICES)—Continued

Service	Fee
Mortgage Custody Services	
GNMA Pools Schedule of Fees	
Mortgage File Review (per file)	2.50
Additions To File (per file)	2.50
Withdrawals Of File (per file)	3.00
Annual File Maintenance (per file with a $150 annual minimum)	1.00
Audit or Review of File (per file)	2.50

[1] No charge. [2] As required. [3] No charge. [4] As required. [5] No charge. [6] As required.

Notes

(1) The above fees assume:
use of standard GNMA Custodial Agreement
all files received are in good order
no additional duties are to be performed by FHLB outside of those listed above.

(2) All out-of-pocket expenses, such as postage and courier fees, are charged on a cost pass-thru basis.

(3) The above fees do not apply to the custody of mortgages pledged as collateral to the FHLB of advances under the "Advances Agreement, Pledge Agreement and Security Agreement".

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

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Federal Register

Thursday
December 17, 1987

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Child Welfare Act Grant Program; Availability of Title II Funds; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

FY 88 Indian Child Welfare Act Grant Program; Availability of Title II Funds December 11, 1987

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This announcement is being published in anticipation of an appropriation for the Indian Child Welfare Act. This act makes available grant funds from the Bureau of Indian Affairs, Department of the Interior, for the purpose of improving child welfare services to Indian children and families.

DATES: The closing date for receipt of applications for this program is February 19, 1988.

ADDRESSES: Bureau of Indian Affairs' area offices are listed in Part IV of this announcement. BIA/Division of Social Services, Code 450, Rm. 310–S, 1951 Constitution Ave., NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: The Bureau of Indian Affairs' area office nearest to the applicant, or David Hickman, Acting Chief, Division of Social Services, address given above; telephone (202) 343–6434.

SUPPLEMENTARY INFORMATION: The Assistant Secretary—Indian Affairs is announcing procedures necessary to apply for grant funds under Title II of the Indian Child Welfare Act. Applications for single-year programs as well as renewal applications for existing multi-year projects will be accepted. The available funding for all applications is $7.6 million. This includes approximately $2.6 million for new single-year applications. It is important that applicants carefully review requirements detailed in the announcement related to deadlines, indirect costs, and page limitations. If an application is not received by the close of business on February 19, 1988, or if the applicant does not itemize indirect costs in their proposed budget, their application will not be reviewed. If an application is longer than the established page limitation, only the first forty pages of the application will be reviewed.

Authority: The Indian Child Welfare Act, Pub. L. 95–608 authorizes the utilization of funds for grants to Indian tribes, organizations, and multi-service Indian centers.

Part I. General Information

(a) Background

This announcement provides information on opportunities to apply for Indian Child Welfare Act grant funds for FY 88. The policies established by the Indian Child Welfare Act of 1978 (ICWA Pub. L. 95–608, 25 U.S.C. 1902, 25 U.S.C. 1931 and 1982), for which these grant funds may be used are:

(1) To prevent separation of Indian children from their families when possible;

(2) When separation is necessary, to reunite Indian children with their families as soon as possible;

(3) When reunification is not possible, to find permanent families through permanent placement with extended families or through adoption; and

(4) To carry out work with Indian children and their families in accordance with the preferences of the ICWA, following procedures and practices which reflect the unique values of Indian culture.

An applicant for an Indian Child Welfare Act Grant may submit only *one* grant application of this program during this application period (refer to 25 CFR 23.21(b)).

(b) BIA Indian Child Welfare Grant Program Purpose

The purposes of Bureau of Indian Affairs' Indian Child Welfare grants as specifically stated in the law are:

(1) The establishment and operation of Indian child and family service programs which promote the stability of Indian families, and

(2) The provision of non-Federal matching shares for other Federal financial assistance programs for "on or near" reservation programs which contribute to that same purpose.

These purposes are further defined in Pub. L. 95–608 sections 201 and 202 or 25 U.S.C. 1931 and 1932, or 25 CFR 23.22. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families, and insure that the permanent removal of an Indian child from the custody of his/her parent or Indian custodian shall be a last resort.

(c) Eligible Applicants

The governing body of any tribe or tribes, or any nonprofit off-reservation Indian organization or multi-service Indian center, may apply individually or as a consortium for a grant. No tribe may submit more than one application.

A consortium is an agreement or association of two or more eligible applicants.

New applications for projects of one year duration, as well as renewal applications for multi-year applications originally funded in FY 86 may be submitted in response to this announcement.

Part II. Available Funds

The appropriation for this program this year is $7.6 million. This includes funding for existing multi-year programs.

Approximately 2.5 million dollars will be available for single year grant applications nationwide this funding period. Grants will be awarded to individual tribes, organizations, or to consortia of tribes and organizations within the following categories:

(a) A maximum of up to $50,000 for eligible applicants with a total service area population of 2,500 or less;

(b) A maximum of up to $75,000 for eligible applicants with a total service area population greater than 2,500 but less than 5,000;

(c) A maximum of up to $100,000 for eligible applicants with a total service area population greater than 5,000 but less than 7,500;

(d) A maximum of up to $150,000 for eligible applicants with a total service area population of 7,500 but less than 15,000;

(e) A maximum of $300,000 for eligible applicants with a total service area of greater than 15,000.

Applicants in the State of Alaska will be allowed a 25 percent cost of living adjustment to the total maximum amount for which they may apply.

Notwithstanding the above grant guidelines, consortia having a total service area population of 5,000 or less, may apply for a maximum grant of up to $100,000 because of the greater administrative costs associated with operating a small consortium. Consortia with service area populations greater than 5,000 must comply with the grant guidelines set above.

Service area population means the total number of Indians eligible for service under 25 CFR 23.2(d)(2) and/or (3) in the geographical area to which the tribe, or organization, or multi-service center can realistically provide the services proposed in the application. The service area population is used only to determine maximum grant allocations that a tribe, multi-service center, or organization may be eligible to receive. These population figures must be based on identifiable statistical resources.

In lieu of an indirect cost rate, all costs associated with the administration of proposed projects shall be line itemed. Due to the limited amount of program funds, administrative costs will

be carefully scrutinized in relation to proposed funds used for direct services. Applications not complying with this requirement will not be accepted for review.

In accordance with 25 CFR 23.25(a)(8), the reasonableness and relevance of the estimated costs for the project are considered in the rating of all project applications. Administrative costs are only allowable within the funding specified by the grant formula, and limitations specified in this announcement. Applicants will not be funded for more than their demonstrated need, as specifically addressed in 25 CFR 23.24 and 23.25. The statistical requirements established in these regulations, as well as the tribe's multi-service center's, or organization's prior service record will be used in determining need. Examples of necessary data include the number of actual or estimated Indian family breakups, and the number of persons who will receive direct services from any portion of the proposed program, by program area.

In accordance with 25 CFR 23.27(c)(3), if an applicant has been a grantee during the preceding fiscal year and proposes to continue essentially the same service program, the applicant, at the time of application, must provide a satisfactory evaluation from the area office along with the other materials required in this subsection.

A satisfactory evaluation means at a minimum, the timely submission of all fiscal and programmatic reports, including utilization of the corrective analysis form when programmatic changes are necessary. At no time may any Indian tribe, organization, or multi-service center which is either an eligible individual applicant in accordance with 25 CFR 23.21 or a member of a consortium, receive Indian Child Welfare Act grant funds greater than a maximum grant of $300,000 through a direct grant or through subgranting procedures with approved applicants.

Part III. Application and Selection Criteria

(a) Statutory Authority

The Indian Child Welfare Program from the Bureau of Indian Affairs is authorized by Title II of Pub. L. 95–608, The Indian Child Welfare Act (25 U.S.C. 1901 et seq., 25 CFR Part 23). The appropriation for the grant program is $7,600,000. The central office will retain 10 percent of the total available funding, to assure funding for any applicant who may appeal a denial at the area office level. If these funds are not utilized for appeals they will be redistributed to the area offices.

(b) The Closing Date for Receipt of Applications

The closing date for receipt of all applications under this Program Announcement is February 19, 1988. Applications for Indian Child Welfare Act Grants must be received in the appropriate Bureau of Indian Affairs' Social Services Area/Agency Office, as specified in 25 CFR 23.28, on or before 4:15 p.m., or the applicable close of business for that office on the closing date of the application period. Post marks will not be considered as meeting the deadline for applications received after the application deadline. The names and addresses of Bureau Social Service Area Offices and staff are listed at the end of this announcement. Hand delivered applications are accepted during the normal working hours Monday through Friday.

Applications which do not meet this criteria are considered late applications and will not be considered in the current competition.

(c) Program Priorities

Indian Child Welfare Act grants are for the purpose of:

(1) Establishment and operation of Indian children and family service programs. In accordance with the policy in 25 CFR 23.2 to emphasize the design and funding of programs to promote the stability of Indian families, program priorities have been established to be utilized by area offices in the competitive review process when more than one application obtains the same competitive score. These priorities re-emphasize the programmatic interest in maintaining the family and preventing out-of-home placements. Program priorities are listed below in descending order:

(a) Operation and maintenance of facilities for the counseling and treatment of Indian families and for the temporary custody of Indian children.

(b) Family assistance (including homemaker and home counselors), day care, after school care, recreational activities, respite care, and employment.

(c) A system for tribes or Indian organizations to license or otherwise regulate Indian foster and adoptive homes or the preparation and implementation of child welfare codes within their legal jurisdictional authority, or pursuant to a state-tribal and/or Indian organization agreement.

(d) Guidance, legal representation, and advice to Indian families involved in tribal, state or federal child custody proceedings.

(e) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(f) Education and training of Indians (including tribal court judges and staff) in skills relating to child and family assistance and service programs.

(g) Subsidy programs under which Indian adoptive children may be provided support comparable to that for which they would be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs.

(h) Home improvement programs.

(i) Other programs designed to meet the purpose of the Act. Planning or feasibility grants may be undertaken for any one of the above listed program purposes. These applications will be ranked according to the priority of the program under consideration.

(2) Providing non-Federal matching shares for other Federal financial assistance programs as prescribed in 25 CFR 23.43. The order of priority of matching share grants will correlate with the purpose of the program receiving the match.

(d) Content of the Application

The application shall be no longer than 40 pages, double spaced excluding the appendix. The table of contents and indices will not be counted toward the maximum length. It is recommended that the appendix be no longer than 20 pages. Any application whose narrative exceeds 40 pages will not be reviewed past page 40.

The application shall include standard form 424 and the following information:

(1) Name and address of Indian tribal governing body(s) or Indian organization applying for a grant,

(2) Descriptive name of project,

(3) Grant funds requested,

(4) The unduplicated client service population directly benefiting from the project,

(5) Length of project,

(6) Beginning date,

(7) Project budget categories or items,

(8) Program narrative statement (including third year plans if appropriate),

(9) Certification or evidence of request by Indian tribe or board of Indian organization (preferably covering the duration of the proposed project),

(10) Evidence of substantial community support for the proposed program. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the

tribal constitution or current practice requires,

(11) Name and address of the Bureau office to which an application is submitted,

(12) Date application is submitted to the Bureau, and

(13) Additional information pertaining to grant applications for funds to be used as matching shares.

Information included in the appendix should relate specifically to the application. The appendix may include, but is not limited to, the following: Resolutions, support letters, position descriptions, fiscal management/accounting certification, operational monitoring system, non-profit status documentation.

(e) Evaluation Criteria

The content of the application and the following factors are considered in the competitive review of these grant applications:

(1) The degree to which an applicant demonstrates in the program narrative an understanding of the social service problems or issues impacting the client population which the applicant proposes to serve.

(If an applicant identifies alcohol or drug abuse as a major problem or issue impacting Indian children and families, they must also clearly address current efforts to coordinate existing resources to attack this problem. This may include information on the development or contents of the Tribal Action Plan specified under section 4206 of the Omnibus Drug and Alcohol Abuse Act of 1986).

(2) The degree to which and the methods by which the applicant intends to fulfill the purpose of the grant, specifically relating to goals and the objectives of the program to the issues and problems impacting the client population. (The proposed methods outlined in the application should have an established basis for operation, e.g., a tribal placement program requires tribally established licensing or placement standards on which to operate, or a program to assist the tribal court requires a tribal code and a tribal court with which to work, etc.)

(3) Whether the applicant presents narrative, quantitative data, and demographics of the client population to be served. Examples of such data include:

(a) The number of actual or estimated Indian child placements outside the home;

(b) The number of actual or estimated Indian family breakups; and

(c) The need for a directly related preventive program. (Refer to Part II for further explanation).

(4) The relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup.

Factors to be considered in determining accessibility include:

(a) Cultural barriers;

(b) Discrimination against Indians;

(c) Inability of potential Indian clientele to pay for services;

(d) Lack of programs which provide free service to indigent families;

(e) Technical barriers created by existing public or private programs;

(f) Availability of transportation to existing programs;

(g) Distance between the Indian community to be served under the proposal and the nearest existing programs;

(h) Quality of service provided to Indian clientele; and

(i) Relevance of service provided to specific needs of Indian clientele.

(5) The proper justification of the extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of Indian family breakup, taking into consideration all the factors listed in paragraphs (1), (2), (3), and (4) of this section. Proper justification must be given for any duplication of services.

(6) Evidence of substantial community support for the proposed program from the Indian community or communities to be served. Such support may be evidenced by:

(a) Letters of support from individuals and families to be served;

(b) Local Indian community representation in and control over the Indian entity requesting the grant;

(c) Letters from local social service or social service related agencies familiar with the applicant's past work experience.

(7) The explanation of proposed facilities and of the structure of the tribal or Indian organization including the structure of the particular unit within the organization requesting grant funds, and the position description of any position to be funded with grant funds, identifying qualifications, responsibilities, and lines of supervision.

(8) The reasonableness and relevance of the estimated costs of the proposed program or service.

An application shall not receive a preliminary approval unless a review of the application determines that it:

(a) Contains all the information required in "D. Content of an Application."

(b) Receives at least the minimum score of 85 in a competitive review under the scoring process using the selection criteria established in regulation,

(c) If an applicant has been a grantee during the year immediately preceding the year for which an application is being made, and has made an application to continue essentially the same service program, satisfactory evaluation(s) from the Area office review of the program must be provided in addition to the other materials required in this subsection.

(f) Single Year Grant Review Process

The BIA's Assistant Secretary or his/her designated representative shall select for grants under the Indian Child Welfare Act those proposals which will in his/her judgment best promote the purposes of the Act. Such selection will be made through a review process in which each application will be scored competitively using the BIA review criteria listed above at the appropriate Bureau Social Service Office referred to in 25 CFR 23.30, 23.31, or 23.33. Grant applications will be reviewed by a panel of reviewers qualified by training and/or experience in human services to Indian populations. These recommendations will be used by the Assistant Secretary's designated representative to preliminarily approve or disapprove all single year grant applications, and make funding recommendations to the Central Office. The Assistant Secretary has final funding authority.

(g) Procedures for Submissions of Multi-Year Renewal Applications

The Assistant Secretary may award grants for the third year of approved multi-year project proposals as authorized in 25 CFR 23.37. *No new multi-year projects shall be considered in the FY 88 application period.* Funding of projects is subject to the availability of funding in accordance with 25 CFR 23.27(e). Only current grantees who have FY 87 approved multi-year projects may submit renewal applications.

Three copies of the following information must be submitted to the appropriate agency or area office by current multi-year project grantees in the renewal application:

(1) New SF–424

(2) Updated information required in 25 CFR 23.24, 23.25, 23.26 and 23.27(c)(3).

(3) Updated Operational Monitoring System (OMS)

(4) Proposed budget

Grantees must have a satisfactory evaluation of the current year of their multi-year project from the Area Office in order to be considered for funding for subsequent project years (25 CFR 23.27(c)(3)).

As stated in 25 CFR 23.27(3), requests (e.g. resolutions) from tribal governing bodies or Indian organizations which cover the duration of the multi-year project will fulfill the requirements specified 25 CFR 23.26 and do not need to be resubmitted on an annual basis. Resolutions that were only for one year of the project must be updated for the year which the grantee is submitting a renewal application.

Grantees must comply with 25 CFR Part 276 in terms of both financial and performance reporting requirements. Failure to meet and comply with regulatory requirements can result in suspension, cancellation and/or termination of program funds. The OMS for a multi-year renewal application must demonstrate a developmental approach to the delivery of the proposed child and family service project (25 CFR 23.37(d)(2)). In revising or updating the OMS, renewal applicants should submit an OMS–2. If your OMS–2 does not require updating please note in your renewal application that you are *not* submitting a revised OMS–2.

(h) Renewal Application Review

Upon submission of the initial application and the renewal application, the revised area/agency certification form will be completed by the appropriate area/agency office specified in 25 CFR 23.30 or 23.31. The applicant must include a satsifactory evaluation of their existing ICWA program (25 CFR 23.27(c)(3)) to include with their renewal application.

Materials submitted for renewal shall not be subject to competitive review. The Area social worker or designated social services staff shall review renewal applications for compliance with 25 CFR Part 23 and 25 CFR Part 276. The Area social worker or designated social services staff shall make recommendations based on this review.

(i) Renewal Application Funding

Funding shall be in accordance with the formula published in the **Federal Register** (25 CFR 23.27(e)(1)). Funding after the first year of a multi-year project will depend upon the grantee's progress in achieving the objectives in the project according to the approved work plan submitted in the previous year(s) of the project (25 CFR 23.37(f)), demonstrated need and the availability of funds.

Part IV. List of BIA Area Offices—BIA Area Offices; Area Social Workers

Aberdeen—Dean Krahulec, 115 4th Avenue, SE, Aberdeen, SD 57401, 605–225–0250, extension 351.

Albuquerque—Robert C. Carr, P.O. Box 26567, Albuquerque, NM 87125–6567, 505–766–3321.

Anadarko—Jerry Bridges, P.O. Box 368, Anadarko, OK 73005, 405–247–6673, extension 257.

Billings—Bill Weber, 316 N. 26th Street, Billings, MT 59101, 406–657–6651.

Juneau—Jimmie Clemmons, P.O. Box 3–8000, Juneau, AK 99802–1219, 907–586–7611.

Minneapolis—Rosalie Clark, Chamber of Commerce Building, 15 South Fifth Street, 10th Floor, Minneapolis, MN 55402, 612–349–3614.

Muskogee—Alice Allen, Old Federal Building, Muskogee, Ok 74401, 918–687–2507.

Navajo—Nancy Evans, P.O. Box M, Window Rock, AZ 86515, 602–871–5151.

Phoenix—Elizabeth Black Owl, One North First St., P.O. Box 10, Phoenix, AZ 85004, 602–241–2262.

Portland—Karen Grey Eyes, 1425 NE Irving St., Portland, OR 97208, 503–231–6783/6785.

Sacramento—Ben Chavarie, Community Service Officer, Federal Office Building, 2800 Cottage Way, Sacramento, CA 95825, 916–978–4691.

Eastern—Division of Social Services, 1951 Constitution Avenue, NW., Code 1000, Washington, DC 20245, 703—235–3179.

W.P. Ragsdale,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 87–28928 Filed 12–16–87; 8:45 am]

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federal register

Thursday
December 17, 1987

Part V

Department of Justice

Bureau of Prisons

28 CFR Part 549

Control, Custody, Care, Treatment, and Instruction of Inmates; Authority to Conduct Autopsies; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 549

Control, Custody, Care, Treatment, and Instruction of Inmates; Authority to Conduct Autopsies

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is publishing its final rule on Authority to Conduct Autopsies. The rule describes the conditions under which a Warden, pursuant to rules prescribed by the Director, Bureau of Prisons, may order an autopsy under his own authority, and those conditions requiring the written consent of another party. The final rule is primarily intended to meet the statutory requirement of 18 U.S.C. 4045.

EFFECTIVE DATE: December 17, 1987.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is publishing its final rule on Authority to Conduct Autopsies. A proposed rule on this subject was published in the **Federal Register** on April 1, 1987 (at 52 FR 10530 et seq.). Interested persons were invited to submit comments on the proposed rule. Members of the public may submit comments concerning the final rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

Title 18 U.S.C. 4045, authorizes the Warden, pursuant to rules prescribed by the Director, Bureau of Prisons, to order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death. The autopsy or tests may be ordered in one of these situations only when the Warden determines that the autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility. An autopsy or post-mortem operation not meeting the conditions specified above requires the written consent of a person authorized to permit such an autopsy or post-mortem operation. Based on the fact that the rule is primarily intended to meet the statutory requirement of 18 U.S.C. 4045, and because the Bureau received no public comment on its proposed rule, the Bureau of Prisons finds good cause under 5 U.S.C. 533(d) to publish its final rule without a delay in the effective date. The final rule, in § 549.80(c)(2), is clarified to state that Bureau staff may not release the body to a funeral home until the funeral home agrees in writing that no preparation for burial, including embalming, should be performed until a final decision is made on the need for an autopsy.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 549

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), Chapter V of 28 CFR is amended as set forth below.

Dated: December 9, 1987.

J. Michael Quinlan,

Director, Bureau of Prisons.

In consideration of the foregoing, amend Subchapter C of 28 CFR, Chapter V, by adding a new Subpart G consisting of § 549.80 to Part 549.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

I. The authority citation for Part 549 is revised to read as follows:

Authority: 5. U.S.C. 301; 18 U.S.C. 3621, 4001, 4005, 4042, 4045, 4081, 4082, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99

II. In Part 549, add a new Subpart G to read as follows:

Subpart G—Authority to Conduct Autopsies

Sec.

549.80 Authority to conduct autopsies.

Subpart G—Authority to Conduct Autopsies

§ 549.80 Authority to conduct autopsies.

(a) The Warden may order an autopsy and related scientific or medical tests to be performed on the body of a deceased inmate of the facility in the event of homicide, suicide, fatal illness or accident, or unexplained death. The autopsy or tests may be ordered in one of these situations only when the Warden determines that the autopsy or test is necessary to detect a crime, maintain discipline, protect the health or safety of other inmates, remedy official misconduct, or defend the United States or its employees from civil liability arising from the administration of the facility.

(1) The authority of the Warden under this section may not be delegated below the level of Acting Warden.

(2) Where the Warden has the authority to order an autopsy under this provision, no non-Bureau of Prisons authorization (e.g., from either the coroner or from the inmate's next-of-kin) is required. A decision on whether to order an autopsy is ordinarily made after consultation with the attending physician, and a determination by the Warden that the autopsy is in accordance with the statutory provision. Once it is determined that an autopsy is appropriate, the Warden shall prepare a written statement authorizing this procedure. The written statement is to include the basis for approval.

(b) In any situation other than as described in paragraph (a) of this section, the Warden may order an autopsy or post-mortem operation, including removal of tissue for transplanting, to be performed on the body of a deceased inmate of the facility with the written consent of a person (e.g., coroner, or next-of-kin, or the decedent's consent in the case of tissue removed for transplanting) authorized to permit the autopsy or post-mortem operation under the law of the State in which the facility is located.

(1) The authority of the Warden under this section may not be delegated below the level of Acting Warden.

(2) When the conducting of an autopsy requires permission of the family or next-of-kin, the following message is to be included in the telegram notifying the family or next-of-kin of the death: "Permission is requested to perform a complete autopsy". Also inform the family or next-of-kin that they may telegraph the institution *collect* with their response.

Where permission is not received from the person (e.g., coroner or next-of-kin) authorized to permit the autopsy or post-mortem operation, an autopsy or post-mortem operation may not be performed under the conditions of this paragraph (b).

(c) In addition to the provisions of paragraphs (a) and (b) of this section, each institution also is expected to abide by the following procedures.

(1) Staff shall ensure that the state laws regarding the reporting of deaths are followed.

(2) Time is a critical factor in arranging for an autopsy, as this ordinarily must be performed within 48 hours. While a decision on an autopsy is pending, no action should be taken that will affect the validity of the autopsy results. Therefore, while the body may be released to a funeral home, this should be done only with the written understanding from the funeral home that no preparation for burial, including embalming, should be performed until a final decision is made on the need for an autopsy.

(3) Medical staff shall arrange for the approved autopsy to be performed.

(4) To the extent consistent with the needs of the autopsy or of specific scientific or medical tests, provisions of state and local laws protecting religious beliefs with respect to such autopsies are to be observed.

[FR Doc. 87-28966 Filed 12-16-87; 8:45 am]
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federal register

Thursday
December 17, 1987

Part VI

Environmental Protection Agency

40 CFR Part 355

Extremely Hazardous Substances List; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL—3303-3]

Extremely Hazardous Substances List

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 17, 1986, the U.S. Environmental Protection Agency (EPA) proposed the deletion of 40 substances from the list of "extremely hazardous substances" promulgated by the Agency under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act of 1986. Today's final rule removes one of those substances, bacitracin, from the list of extremely hazardous substances.

EFFECTIVE DATE: This rule becomes effective on December 17, 1987.

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. EPA, 401 M Street, SW., Washington, DC. 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is 202–382–3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Carrie Wehling, Office of General Counsel, LE–132S, U.S. EPA, 401 M Street, SW., Washington, DC 20460, (202) 382–7706. The Chemical Emergency Preparedness Hotline can also be contacted for further information at 1–800–535–0202, in Washington, DC at 1–202–479–2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Statutory Authority

This regulation is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 ("the Act").

II. Delisting of Bacitracin

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99–499 (1966). Title III of SARA established a program designed to encourage state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986, - 42 U.S.C. 11001–11050.

Subtitle A of the Act establishes the framework for local emergency planning. Under section 302, a facility which has present an "extremely hazardous substance" in excess of its "threshold planning quantity" ("TPQ") must notify the State emergency planning commission and participate, as necessary, in local emergency planning activities.

On November 17, 1986, EPA published the statutorily-designated list of "extremely hazardous substances" and their associated TPQs in an interim final rule, as required by section 302. 51 FR 41570. On the same day, EPA proposed the deletion of a number of substances, including bacitracin, from the list of extremely hazardous substances based on the fact that they did not meet the Agency's criteria for acute toxicity. 51 FR 41593.

On November 23, 1987, EPA published a notice of availability of its further study on the long-term toxicity of bacitracin. 52 FR 44921. In that notice, EPA stated that, based on its analysis of the toxicity of bacitracin, the Agency has no reason to believe that the substance should remain on the list of extremely hazardous substances.

Also on November 23, 1987, the District Court for the District of Columbia issued an order in *A.L. Laboratories, Inc.* V. *Environmental Protection Agency,* Civ. Action No. 87–1991–OG (and consolidated cases) requiring EPA to remove bacitracin from the list of extremely hazardous substances under section 302 of the Act.

As a result of the Court's order and in light of the absence of information suggesting that bacitracin may result in toxic or other effects upon exposure to a release of the substance into the environment, EPA today is delisting bacitracin from the list of "extremely hazardous substances" subject to emergency planning and notification requirements under this Act.

As a result of today's action, EPA is no longer considering comments on one aspect of the November 23, 1987 notice of availability, *i.e.* whether bacitracin should be delisted. However, because the bacitracin study sets forth several general criteria for evaluation of long-term toxic effects, EPA is still requesting comment on the study and those criteria for purposes of future listings and delistings from the extremely hazardous substances list under section 302.

III. Effective Date

As indicated in the opening section of this preamble, this rule is effective immediately. Section 553(d) of the Administrative Procedure Act ("APA") generally requires the publication of a rule no less than 30 days prior to its effective date. However, under section 553(d)(1), the Agency may suspend the 30 day effective date requirement for a rule which relieves a restriction. Because this rule provides relief from regulatory requirements previously applicable to persons handling large amounts of bacitracin, EPA is suspending the 30 day effective date requirement for this delisting.

IV. Regulatory Analyses

Because this delisting is not a "major" rule as defined under Executive Order 12291, no regulatory impact analysis has been prepared in connection with this final rule.

In addition, because this delisting will not have a significant impact on a substantial number of small entities, no analysis of the impacts of this rule on small entities is required under the Regulatory Flexibility Act of 1980.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: December 10, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Part 355 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for Part 355 is revised to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11025, 11028, and 11029 (1986).

Appendix A—[Amended]

2. Appendix A to Part 355 is amended to remove the following entry:

CAS No.	Chemical name	. . .
. . . . .		
1405-87-4	Bacitracin	. . .

Appendix B—[Amended]

3. Appendix B to Part 355 is amended to remove the following entry:

CAS No.	Chemical name	. . .
. . . . .		
1405-87-4	Bacitracin	. . .

[FR Doc. 87-29097 Filed 12-16-87; 9:27 am]
BILLING CODE 6560-50-M

40 CFR Part 355

Extremely Hazardous Substances List

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 17, 1986, the U.S. Environmental Protection Agency (EPA) proposed the deletion of 40 substances from the list of "extremely hazardous substances" promulgated by the Agency under section 302 of the Emergency Planning and Community Right-to-Know Act of 1986, Title III of the Superfund Amendments and Reauthorization Act of 1986. Today EPA is taking final action to remove three of those substances from the list of extremely hazardous substances.

EFFECTIVE DATE: This rule becomes effective on December 17, 1987.

ADDRESS: The record supporting this rulemaking is contained in the Superfund Docket located in Room Lower Garage at the U.S. EPA, 401 M Street, SW., Washington, DC 20460. The docket is available for inspection by appointment only between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday, excluding federal holidays. The docket phone number is 202-382-3046. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Carrie Wehling, Office of General Counsel, LE-132S, U.S. EPA, 401 M Street, SW., Washington, DC 20460 (202) 382-7706. The Chemical Emergency Preparedness Hotline can also be contacted for further information at 1-800-535-0202, in Washington, DC, at 1-202-479-2449.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Statutory Authority

This regulation is issued under section 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 ("the Act").

II. Today's Rulemaking

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), Pub. L. No. 99-499 (1986). Title III of SARA established a program designed to encourage state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. 11001-11050. Subtitle A of the Act establishes the framework for local emergency planning. Under section 302, a facility which has present an "extremely hazardous substance" in excess of its "threshold planning quantity" ("TPQ") must notify the State emergency planning commission andparticipate, as necessary, in local emergency planning activities.

On November 17, 1986, EPA published the statutorily-designated list of 402 "extremely hazardous substances" and their associated TPQs in an interim final rule, as required by section 302.51 FR 41570. On the same day, EPA proposed the deletion of 40 substances from the list of extremely hazardous substances based on the fact that they did not meet the Agency's criteria for acute toxicity. 51 FR 41593.

Based on public comment on this proposal, EPA announced on April 22, 1987, that it had deferred the proposed delisting of these substances, pending an evaluation of the long-term effects from short-term exposure to each of the substances proposed for delisting. 52 FR 13388.

On November 23, 1987, the District Court for the District of Columbia issued an order in *A.L. Laboratories, Inc.* v. *Environmental Protection Agency*, Civ. Action No. 87-1991-OG (and consolidated cases) requiring EPA to remove four of the substances proposed for delisting from the list of extremely hazardous substances under section 302 of the Act. The basis for the Court's order was its reasoning that Congress did not intend to include in the statutorily-designated list substances listed due to clerical error.

In response to the Court's order, EPA has published a final rule removing one of those substances, bacitracin, from the section 302 list. Today EPA is taking final action to delist the remaining three substances subject to the Court's order: Dibutyl phthalate, dimethyl phthalate, and dioctyl phthalate. In addition, EPA believes that the remaining 36 substances originally proposed for delisting on November 17, 1986 are indistinguishable from the four substances subject to the Court's order with respect to their status on the list of "extremely hazardous substances". As a result, EPA intends to issue a final rule within the next 30 days deleting the other 36 substances proposed for delisting on November 17, 1986. Upon the effective date of that rule, those substances will no longer be subject to the emergency planning and notification requirements under the Act.

III. Effective Date

As indicated in the opening section of this preamble, this rule is effective immediately. Section 553(d) of the Administrative Procedure Act ("APA") generally requires the publication of a rule no less than 30 days prior to its effective date. However, under section 553(d)(1), the Agency may suspend the 30 day effective date requirement for a rule which relieves a restriction. Because this rule provides relief from regulatory requirements previously applicable to persons handling large amounts of these substances, EPA is suspending the 30 day effective date requirement for this delisting.

IV. Regulatory Analyses

Because this delisting is not a "major" rule as defined under Executive Order 12291, no regulatory impact analysis has been prepared in connection with this final rule.

In addition, because this delisting will not have a significant impact on a substantial number of small entities, no analysis of the impacts of this rule on small entities is required under the Regulatory Flexibility Act of 1980.

List of Subjects in 40 CFR Part 355

Chemicals, Hazardous substances, Extremely hazardous substances, Community right-to-know, Chemical accident prevention, Chemical emergency preparedness, Threshold planning quantity, Reportable quantity, Community emergency response plan, Contingency planning, Reporting and recordkeeping requirements.

Dated: December 10, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Part 355 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

1. The authority citation for Part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11003, 11004, 11025, 11026, 11028, and 11029 (1986).

Appendix A—[Amended]

2. Appendix A to Part 355 is amended to remove the following entries:

CAS No.	Chemical name	* * *
* * *	* * *	
84-74-2	Dibutyl Phthalate.	* * *
* * *	* * *	
131-11-3	Dimethy Phthalate.	* * *
* * *	* * *	
117-84-0	Dioctyl Phthalate.	* * *

Appendix B—[Amended]

3. Appendix B to Part 355 is amended to remove the following entries:

CAS No.	Chemical name	* * *
* * *	* * *	
84-74-2	Dibutyl Phthalate.	* * *
* * *	* * *	
117-84-0	Dioctyl Phthalate.	* * *
131-11-3	Dimethyl Phthalate.	* * *

[FR Doc. 87-29098 Filed 12-16-87; 9:28 am]

BILLING CODE 6560-50-M

federal register

Thursday
December 17, 1987

Part VII

Department of Transportation

Maritime Administration

46 CFR Part 249

Approval of Underwriters for Marine Hull Insurance, Extension of Comment Period

Part VII

Department of Transportation

Maritime Administration

46 CFR Part 249

Approval of Underwriters for Marine Risk Insurance; Extension of Computer Period

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 249

[Docket R-101]

Approval of Underwriters for Marine Hull Insurance

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Proposed Rulemaking: Extension of comment period.

SUMMARY: This notice extends the comment period for a Notice of Proposed Rulemaking (NPRM) that MARAD has issued concerning its policies with respect to the placement of hull insurance on subsidized and Title XI program vessels (52 F.R. 38481, October 16, 1987). American Maritime Transport, Inc. (AMT) has requested a one-month extension of the comment period due to end on December 15, 1987. AMT stated in its request that in an effort to provide detailed information regarding the impact of the current rules, it is undertaking an extensive review of its past operations. It also hopes to provide detailed estimates of the impact of the proposed rule. The analyses are time consuming and cannot, according to AMT, be completed by the deadline. While MARAD would normally believe one month to be an excessive extension after a 60-day comment period, in view of the impending holidays, MARAD hereby grants the requested extension of the comment period, in order to allow AMT and other affected parties more time to prepare comments.

DATE: NPRM comment period expiration date is extended until January 15, 1988.

ADDRESS: Send the original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. To expedite review of the comments, the agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: William B. Ebersold, Office of the Associate Administrator for Maritime Aids, Maritime Administration, Washington, D.C. 20590, Tel. (202) 366-0364.

Dated: December 15, 1987

By Order of the Maritime Administrator:

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 87-29107 Filed 12-16-87; 10:23 am]

BILLING CODE 4910-81-M

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S.J. Res. 35/Pub. L. 100-190

Relating to the commemoration of January 28, 1988, as a "National Day of Excellence." (Dec. 14, 1987; 101 Stat. 1292; 1 page) Price: $1.00

H.R. 2939/Pub. L. 100-191

Independent Counsel Reauthorization Act of 1987. (Dec. 15, 1987; 101 Stat. 1293; 16 pages) Price: $1.00